

# CAFO STAKEHOLDER MEETING

March 17, 2009

Austin, Texas

## Summary

### Welcome and Introductions – James Moore

### Federal Rule Changes – James Moore

- The goal of the meeting is to inform stakeholders of the EPA changes and how TCEQ intends to implement them
- TCEQ wants suggestions and comments from stakeholders

### 30 TAC 321 Rule Revision

- Background Information
  - EPA implemented new federal CAFO regulations December 22, 2008 in response to 2<sup>nd</sup> Circuit Court's decision in *Waterkeeper Alliance et al.v.EPA*, 399 F.3d 486.
  - TCEQ has 1 year to adopt new Federal rules (12/22/2009)
- Federal Rule Changes
  - No Discharge Certification Option
  - Nutrient Management Plan
    - Linear Approach
    - Narrative Approach
  - New source swine, veal calf, and poultry requirements
- No Discharge Certification
  - Would allow CAFOs that do not propose to discharge to certify that the facility is designed, constructed, operated and maintained such that the CAFO will not discharge
  - TCEQ has no plan to implement this option
- Nine Elements of EPA's NMP
  - Adequate waste storage
  - Mortality management
  - Diversion of clean water
  - No contact between confined animals and waters in the state
  - Proper handling of chemicals
  - Site specific conservation practices (i.e. buffers)
  - Manure, wastewater and soil testing protocols
  - Land application protocols
  - Record keeping requirements
- EPA 2008 CAFO Rule: Terms of the NMP
  - Two alternative options for rates of application
    - Linear approach
    - Narrative rate approach
- EPA 2008 CAFO Rule: Linear Rate Approach
  - Rates of application expressed as pounds of Nitrogen and Phosphorus
  - Terms include:
    - Maximum application rates for manure and wastewater for each year, crop, and field in lbs/ac and factors necessary to determine rates
    - TCEQ does not plan on implementing this option
- EPA 2008 CAFO Rule: Narrative Rate Approach
  - Rates of application expressed as a narrative rate of application that results in the amount, in tons or gallons, of manure and wastewater to be applied
  - Terms include:

- Maximum amount of N and P derived from all sources for each crop in lbs/ac for each LMU
  - Outcome of PI for each LMU
  - Crops for each LMU (including alternative crops)
  - Yield goals for each crop
  - N and P recommendations
  - Methodology to determine application rates (Nutrient Management standard 590)
- Methodology must account for the following factors:
  - Results of soil test
  - Credits for all plant available N
  - N and P in manure and wastewater
  - Consideration of multi-year P application
  - Accounting for all other forms of N and P
  - Form and source of manure and wastewater
  - Timing and method of application
  - Volatilization and mineralization
- EPA 2008 CAFO Rule: Changes to the NMP
  - Any changes, except changes resulting from annual recalculation, must be submitted to TCEQ
  - NMP reviewed by Executive Director to determine if changes require revisions to the terms of the NMP
  - TCEQ would determine if revisions to terms of the NMP can be substantial or non-substantial
  - Non-substantial change process
    - Make NMP publicly available
    - Incorporate changes into the permit
    - Notify the permittee and public of any changes
  - Substantial change process
    - Incorporate changes in the draft permit
    - Make NMP publicly available through public notice
    - Review public comments, response to comments
    - Notify the permittee and public of final decision
    - Addition of land application acres not in the CAFO's NMP (already required in Texas)
    - Change in maximum application amounts of N and P derived from all sources when narrative rate approach is used (Waste production at the facility)
    - Addition of crops not included in the CAFO's NMP
    - Change in the PI rating
- NSPS – New Source Performance Standards
  - Swine, Veal, and Poultry
  - No discharge of manure and wastewater into or adjacent to Waters in the State
  - EPA's rule
    - Removes the 100-year, 24-hour design criteria
    - Requires design using AWM software or equivalent
    - Evaluation with SPAW model using 100 years daily climatic data
  - Provisions for upset/bypass apply
- Timeline
  - Comments due April 1, 2009
  - Adopt rules by December 22, 2009

#### Questions and Discussion

- Annual recalculations don't have to be submitted as changes
- No authorized discharge for swine or poultry during catastrophic event
- Poultry and swine contained in a house, if extreme, requires RCS

Q: How is the rule to be implemented?

A: Permittee is not required to update the General Permit. It will be corrected when it comes up for renewal or the next permit action

Q: Why isn't TCEQ incorporating the no discharge certification as an addition to the rule?

A: TCEQ has the authority under the Water Code to regulate discharges. The Water Code is broadly defined that the states can regulate any activity that causes pollution

Q: If EPA allows it, why doesn't Texas?

A: TCEQ can be more strenuous. Used to be a state-only permit. Could eliminate NMP contingencies

- The no discharge certification would still apply.
- The state has always been no discharge. The rule could distinguish between Waters of the US and Waters of the State.
- Requirements to self certify are the same requirements under same source rule

Q: Can we comment on any portion of the rule, or just these changes?

A: Just the changes made by EPA.

Q: Will the rest of the rule ever be opened up for comments?

A: Possibly at a later date.

Q: The NMP is made flexible for market conditions, can you change from one crop to another?

A: Federal rules say alternative crops can be in NMP with separate requirements. The producer has to put it in up front. The opportunity is there to put in alternative crops in the NMP.

Q: Do previous comments have to be resubmitted?

A: The comment period for this has just opened. Other comments must have been for the GP

Q: NMP matches 590, will TCEQ take 590 spreadsheets?

A: We are talking about 590 practice standards, not spreadsheets.

Q: Other comments submitted were not part of the practice standard?

A: The 590 practice standard must be met. The NMP must meet the rule.

- Refer to 590 and 633 for complete standards

Q: The 590 practice standard emphasizes erosion controls for the NMP, do they have to run test to show LMU is not eroding?

A: Taking into account the PI, permit requires erosion to be addressed.

Q: If they use the 590 spreadsheet, how will they address copying it?

A: TCEQ receives print outs of 590 all the time

Q: Will comments be posted?

A: These meetings and stakeholder's informal comments help TCEQ to determine what to do. Send formal comments to James Moore at MC 150.

A: Is there a draft for proposed rule changes?

Q: TCEQ will start drafting rule language after April 1. We will need approval at agenda for the public notice. This rule is on the fast-track to being final in a few months. The usual process takes much longer.

Q: When will it go to the Commissioners?

A: It has to go by July.

Q: Have we had EPA input?

A: Yes, with conference calls and webcast meetings. We have not yet had a one on one meeting.

# CAFO STAKEHOLDER MEETING

Attendee List  
March 17, 2009  
Austin, Texas

Mitchell E. Lowther	Lowther Consulting, Inc.
David Lowther	Lowther Consulting, Inc.
Norman Mullen	Enviro-Ag
Marvin Snow	ITS
Greg Good	Texas Farm
Joy Tegbe	TCEQ – CAFO
Ken Horton	TPPA
Jim Wyrick	ETES
Josh Winegarner	TCFA
John Ed Brothers	Ag Consulting
Eugene Lindemann	Easterling Consultants
Eric Allmon	Sierra Club
Virgil Helm	Easterling Consultants
Bruce Wiland	WCI
Courtney Cox	Jackson Walker
Richard Eyster	TDA
James Grimm	Texas Poultry
Darrell Williams	Eco-Environment
Lauren Kalisek	Lloyd Gosselink
Catherine Nash	NRCS
James Moore	TCEQ
Laurie Fleet	TCEQ
Ned Meister	TXFB
Don Smith	Easterling Consultants
Darrell	Easterling Consultants
Craig Coufal	TAMU