2002 Feedlot Program

Report to the Legislature

Minnesota Pollution Control Agency

January 2003

2002 FEEDLOT REPORT CONTENTS

MPCA Feedlot Program Overview.....1
Section A. MPCA-Delegated County Resources

Feedlot Program Achievements.....3
Section B. Delegated County Achievements
1. Registration
2. Regulatory Component
3. Feedlot Owner Education
Section C. MPCA Achievements
1. Permitting of Large Feedlots
2. Timely Issuance of Permits
3. Inspections
4. Feedlot Owner Education
5. Enforcement Strategy
6. Manure Application Practices
7. County Review Program
8. Response to Legislative Auditor

Future Challenges 7
Section D. Proposed 2003 Legislation
Section E. Future Feedlot Program Activities
1. Follow through on Open Lot Agreements
2. Creating New Approaches through Partnerships
3. Manage Feedlots in Harmony with Social and Environmental Considerations
4. Maintain County Feedlot Program
5. Importance of Land Application of Manure
6. Improve Approaches to Pasture Operations
7. New Approaches to Enforcement

Figures

1. Delegated Feedlot Grants 2
2. County Feedlot Program Statistics 3
3. Record of NPDES Feedlot Permits 4
4. Timeliness in Issuance of Feedlot Permits 4
5. MPCA Feedlot Inspections 5
6. MPCA Compliance/Enforcement Data 6

Appendices

1. Feedlot Program Implementation 11
2. MPCA Compliance/Permitting Field Staff 12
3. Delegated County Grant Awards.....13
4. Registered Feedlots by County.....14
5. NPDES Permits Issued by MPCA 15
6. Response to Auditor's Recommendations 16
7. Letters to MPCA 20

Contacts

Myrna Halbach
Program Manager 320-214-3786
507-537-6399
myrna.halbach@pca.state.mn.us

Wayne Anderson
Feedlot Coordinator 651-296-7323
wayne.anderson@pca.state.mn.us

As required by Minnesota Statutes section 3.197, the cost to write, print and distribute this Legislative report is $6,300.

2002 FEEDLOT LEGISLATIVE REPORT

The Minnesota Pollution Control Agency (MPCA) is providing this legislative report for two reasons. First, as required in Minnesota Sessions Laws 2001 (1st Special Session, Chapter 2, Section 2), the MPCA is reporting on counties that receive state feedlot grant funds regarding "activities conducted under the grant, expenditures made, and local match contributions." Second, the MPCA is reporting on its activities, including responses to the January 1999 Legislative Auditor's feedlot recommendations and the increased funding received by the MPCA in the 2001 legislative session.

This legislative report recommends that the Legislature should amend Minn. Stat. 116.07, subd. 7(p) to exempt federally regulated feedlots from the cost-share provisions in parts (1) and (2) of this statute.

MPCA FEEDLOT PROGRAM OVERVIEW

The MPCA is the principal agency for regulating feedlots in Minnesota. The MPCA has been regulating feedlot operations since the early 1970s. By law, the MPCA may also delegate some of its feedlot program responsibilities to counties. In the 1990s, feedlots emerged nationally as an important environmental and economic issue because of the growth in the number of large feedlots (> 1,000 animal units) and the tendency for large feedlot owners not to live on-site. As public concerns with feedlots grew, the MPCA came under intense scrutiny by the Minnesota Legislature.

In 1998, the Legislative Audit Commission directed the Office of the Legislative Auditor (Legislative Auditor) to evaluate the MPCA's feedlot program. The Legislative Auditor issued the "Animal Feedlot Regulation: A Program Evaluation Report, prepared by the Office of the Legislative Auditor (January 1999)" (Audit Report). The Audit Report found a number of problems with the MPCA's feedlot program and significant inconsistencies in the adequacy of delegated county programs. Two main issues raised in the Audit Report were: (1) that the MPCA feedlot rules, last revised in 1978, were outdated, and (2) the MPCA did not have sufficient staff working in the feedlot program.

During 1999 and 2000, the MPCA focused its efforts on completion of feedlot rule revisions. The Minnesota Legislature was very involved in reviewing and approving the draft rules. The revised rules became effective in October 2000 and are found in M.R. 7020 (2000). During the 2001 Legislative Session, the MPCA requested and the Legislature approved significant new funding for the feedlot program. This funding included feedlot cost-share funding ($610,000 additional to other cost-share funds), technical assistance funding ($725,000), and regulatory program funding ($1,725,000). The remainder of this legislative report will focus on the following five areas:

1. Additional resources provided to the MPCA and delegated counties in 2001.
2. Delegated county activities.
3. MPCA activities with special emphasis on legislative audit recommendation response.
4. Proposed 2003 legislation to meet federal program requirements.
5. Future feedlot program activities.

Section A. MPCA – Delegated County Resources

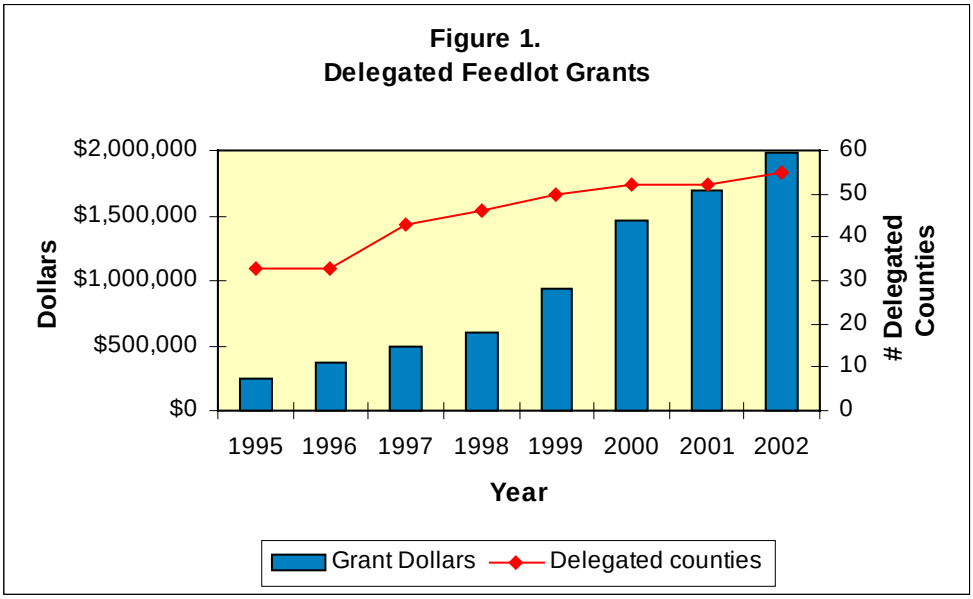
Administration of feedlot regulations is accomplished by a combination of state and local feedlot programs. The MPCA's 1998 decentralization placed staff closer to where their services were needed throughout the state. The goal was to improve service delivery and ensure that decision making required in that service delivery was faster. Accordingly, MPCA regional FTE (full-time equivalents, a measure of staff time dedicated to a program) numbers increased from 116 FTE in 1997 to 187 FTE by the end of 2002. In addition to staff actually providing environmental regulatory activity, additional administrative and management support had to be assigned locally to assist them. The FTE numbers for program activity described in this report include environmental staff, and administrative and management support. The feedlot program is implemented in eight (8) offices throughout Minnesota, currently using 43 FTE. The current MPCA feedlot budget is $5,374,000. The Legislature increased MPCA feedlot funding during the 2001 session. With the increase, the MPCA added nine additional staff as follows:

1. 1.0 FTE to improve the MPCA's data management system;
2. 2.5 FTE providing technical assistance to county feedlot officers and producers;
3. 0.5 FTE to improve the environmental review process, and
4. 5.0 FTE to improve the MPCA's efforts in permit review, land application review and compliance inspections, including enforcement

Appendix 1 shows the organizational structure for implementation of the feedlot program. Appendix 2 shows only the compliance/permit field staff and their deployment.

Fifty-five Minnesota counties have delegated county feedlot programs. County programs are staffed by County Feedlot Officers and are funded by State grants based on the number of feedlots in the county. Counties must match the State grant one to one with cash or in-kind services. See Appendix 3 for detail grant allocation to delegated counties from 1995 through 2002. Figure 1 shows the trend for grants made available for delegated counties during this period.

From 1995 to 2002, the legislature increased the funding for delegated counties by nearly two



million dollars. In 2001, the Legislature approved a one-time allotment of an additional $500,000 from the General Fund to help county feedlot program funding in fiscal years 2002 and 2003. While the MPCA believes that continuation of this one-time funding is important, the MPCA cannot recommend that the Legislature make this one-time biennial appropriation permanent at this time because of Minnesota's budget deficit of $4.2 billion in fiscal years 2004 and 2005. However, if Minnesota's budget situation improves in the future, the MPCA will likely recommend permanent restoration of this appropriation for operation of delegated county feedlot programs.

.

FEEDLOT PROGRAM ACHIEVEMENTS

Section B. Delegated County Achievements

Delegated counties are important to the effective and efficient implementation of Minnesota's feedlot program. Delegated counties provide local understanding and commitment to the regulatory components of the feedlot program and to obtaining technical and financial assistance for livestock producers needing such aid.

1. Registration. A prime example of the value of delegated counties is the completion of the registration effort by January 2002 in accordance with the feedlot rules (M.R. ch 7020 (2000)). About 29,000 feedlots were registered from October 2000 to January 2002. Appendix 4 provides a map of the number of registered feedlots by county. Delegated counties are highlighted in green on this map.

2. Regulatory Components. Figure 2 summarizes key program achievements by delegated counties. In addition to these program achievements, delegated counties issued 90 letters of warning of possible feedlot rule or permit violations in 2001.

3. Feedlot Owner Education. About 4,800 feedlot owners were provided feedlot information and training at meetings sponsored by delegated counties in 2001.

Section C. MPCA Achievements

The MPCA feedlot program made gains in every area of measurement in 2001 and 2002. Service to feedlot owners improved, new pollution protection and abatement programs were implemented, and the level of "field presence" increased statewide.

In an e-mail to the MPCA, dated September 13, 2002, Stephen Jann, Water Quality Permit Specialist, of the U.S. Environmental Protection Agency expressed appreciation "for the fine work MPCA is doing to assure that

Figure 2.
County Feedlot Program Statistics

Measurement	1997	2001	2002*
Number of delegated counties	43	52	55
Sites inspected	2151	5296	6050
Permits issued	109	301	345
Complaints received	321	407	475

***Note: 2002 figures are projected; county reports are not due to MPCA until March 2003**

Figure 3.
Record of NPDES Feedlot Permits

Total estimated feedlots needing an NPDES permit.	**566**
Feedlots with NPDES permits on October 1, 2001.	45
NPDES permits issued from October 1, 2001 – September 30, 2002.	422
Total number of Minnesota Feedlots with NPDES permits.	**467**
Total number of NPDES permits remaining to be issued.	**99**

Concentrated Animal Feeding Operations (CAFOs) possess National Pollutant Discharge Elimination System (NPDES) permits as a means for preventing water pollution from manure and related wastewater."

Below is a summary and discussion of the more significant results generated in 2001 and 2002 from the MPCA feedlot program.

1. MPCA completes permitting of 82 percent of large feedlot operations (1,000 or more animal units). All feedlot owners with 1,000 or more animal units are required by federal and state regulations to have an NPDES permit. Prior to October 1, 2001, only a small number of feedlots with 1,000 or more animal units had been issued an NPDES permit. See Figure 3 above. The 2001 legislative action funding additional feedlot positions allowed the MPCA to make implementation of this requirement a priority. As a result, 422 NPDES permits were issued during the 12-month period from October 1, 2001, to September 30, 2002. The issuance of these permits resolved the permit issuance backlog for this group of feedlot owners. The remaining feedlot owners required to have NPDES permits will receive them by December 2003. See Appendix 5, which provides a map of the number of NPDES permits issued by the MPCA in each county.

2. Timely issuance of permits to feedlot owners. The MPCA has improved markedly the amount of time required to issue a permit after receiving a complete permit application from a feedlot owner. Figure 4 shows that the MPCA met statutory permit issuance deadline requirements over 90 percent of the time during the past year.

   The results shown in Figure 4 are a substantial improvement from the issuance rates that were common only two years ago. An MPCA report to the legislature in November of 2000 (Ability to Meet 60-day Issuance Deadline for Feedlot) indicated that permits issued in 1999 and 2000 were issued

Figure 4.
MPCA Timeliness in Issuance of Feedlot Permits

Calendar Period	Percent issued in compliance with Minn. Stat. § 15.99
October – December 2001	90
January – March 2002	89
April – June 2002	92
July – September 2002	100

within the requirements of M.S. §15.99 only 49 percent of the time. The MPCA attributes the improvement in the permit issuance timeliness to (1) new feedlot rules that clarified expectations for permit applicants, and (2) increased resources for the MPCA feedlot program provided by the 2001 Legislature.

3. Inspections: MPCA feedlot program emphasizes "field presence." The MPCA is responsible for conducting all feedlot inspections in non-delegated counties; inspections for all feedlots with 1,000 or more animal units throughout the state; and, providing assistance on feedlot inspections when requested in delegated counties. As Figure 5 shows, the number of inspections increased substantially in 2002 as compared to 2001.

Figure 5.
MPCA Feedlot Inspections

Inspection Type	FY01	FY02
CAFO (1,000 animal units or more)	155	250
Construction	34	122
Interim Permit Corrections Complete	31	22
Assistance	104	268
Total MPCA Feedlot Inspections	**225**	**662**

4. Feedlot Owner Education. About 9,450 feedlot owners, consultants, and technical assistance staff attended MPCA feedlot information and training meetings in 2001.

5. MPCA feedlot enforcement strategy emphasizes return-to-compliance. The MPCA and county feedlot programs work to communicate early and frequently with feedlot owners regarding matters of compliance. The MPCA uses many tools to achieve compliance including education, technical assistance, interim permits, and a range of enforcement actions. Enforcement actions with monetary penalties are typically used in cases of negligence and serious violations where environmental impacts are observed. Figure 6, on page 6, indicates the compliance and enforcement actions taken by the MPCA in the fiscal year 2002.

6. Use of Manure Application Practices Increases after 2000 Feedlot Rule Revision and Training. More farmers are adopting recommended manure and nutrient management practices than before the feedlot rules were revised in 2000. A study, Land Application of Manure: Minnesota Livestock Producers' Practices and Educational Needs, November 2002, was prepared by John Vickery, a consultant, for the University of Minnesota Water Resources Center. The Report contained an evaluation of farmer practices in four counties in different parts of Minnesota reported overall adoption rate of 10 key manure application practices increased from 53 percent before the 2000 revised feedlot rules to a current adoption rate of 69 percent.

The producers in the study expect their adoption rates will further increase by 2004 to 84 percent. Producers who attended training on the new land application rules predict a greater change in their practices compared to those who did not attend training. Those attending the training expect an overall 38 percent adoption rate increase, while non-attendees project a 22 percent adoption rate increase (pre-2000 to 2004 projected).

7. Establishment of county review program. To provide oversight and assistance to delegated counties, the MPCA has designed and implemented county feedlot program reviews. The MPCA has assigned 0.5 FTE from the 2001 Legislative-approved 9 FTE to conduct program reviews. The MPCA has conducted five county program reviews. The MPCA expects to complete seven additional reviews by July 1, 2003. The reviews examine the recordkeeping systems used by counties to track activities and the protocol used to conduct inspections and issue permits. To assist the counties with their recordkeeping activities, the MPCA developed tracking logs for counties to use.

   During the 2002 Fiscal Year, the MPCA conducted a review of the Rock County delegated-county feedlot program as the result of U.S. Department of Justice criminal indictments against a county feedlot official. The review discovered several deficiencies in Rock County's program including administrative errors, improper size calculations, and failure to identify pollution hazards. A Memorandum of Understanding, between the MPCA and Rock County, and the development of a workplan have been completed to provide a process to resolve these issues. The lessons learned from the Rock County program review have been incorporated in the ongoing county program reviews.

8. Response to Legislative Audit Report. The Legislative Auditor conducted an audit of Minnesota's feedlot program and produced an Audit Report in January 1999. The Audit Report contained several recommendations for improvement. Appendix 6 provides a breakdown of the Legislative Auditor's recommendations and the MPCA's actions to respond to the recommendations.

Figure 6.
MPCA Feedlot Compliance/Enforcement Data*

Compliance/Enforcement Response	Number of Actions
Letters of Warning	127
Administrative Penalty Orders	17
Stipulation Agreements	1
Total Actions	**145**

***Note: Data represents FY02 efforts.**

FUTURE CHALLENGES

Section D. Proposed 2003 Legislation to meet Federal program requirements

The U.S. Environmental Protection Agency (EPA) has informed the MPCA that cost-limitations provisions in law related to corrective measures that may be required of a feedlot operator are inconsistent with point source (NPDES) requirements and needs to be revisited. This clarification is important for Minnesota in implementing the federal program. Appendix 7 contains letters from EPA to the MPCA explaining their concern with these provisions.

M.S. 116.07 subd 7(p) limits the amount that the MPCA may require a feedlot operator to spend on corrective measures to $3000 unless 75 percent cost-share is made available for upgrades at feedlots with a capacity of less 300 animal units; and $10,000 unless the lesser of 75 percent cost-share or $50,000 is made available for feedlots between 300 and 500 animal units.

Federal NPDES rules allow for designation of certain feedlots in these size categories as Concentrated Animal Feeding Operations (CAFOs). The EPA and the Minnesota Attorney General's Office have indicated that this cost limitation is inconsistent with Federal NPDES rules for compliance with feedlots designated as CAFOs and is not acceptable under the State's NPDES delegation agreement with EPA. Failure to enact this clarification could endanger Minnesota's Federal delegation of the NPDES program including the loss of administrative funding for Minnesota's NPDES program, which includes 1500 additional businesses besides feedlots, and federal acceptance of Minnesota's feedlot program for federally-regulated feedlots.

The MPCA recommends that the Legislature amend M.S. 116.07, subd. 7(p) to exempt federally regulated feedlots from the cost-share provisions in parts (1) and (2) of this statute.

The MPCA proposes the following changes to M.S. 116.07 subd 7(p):

> (p) Unless the upgrade is needed to correct an immediate public health threat under section 145A.04, subdivision 8, the agency may not require a feedlot operator:
>
> (1) to spend more than $3,000 to upgrade an existing feedlot with less than 300 animal units unless cost-share is available to the feedlot operator for 75 percent of the cost of the upgrade, <u>or unless the facility is designated as a concentrated animal feeding operation(CAFO) under Code of Federal Regulations, title 40, section 122.23</u>; or
>
> (2) to spend more than $10,000 to upgrade an existing feedlot with between 300 and 500 animal units, unless cost-share money is available to the feedlot operator for 75 percent of the cost of the upgrade or $50,000, whichever is less, <u>or unless the facility is defined or designated as a CAFO</u>.

The MPCA recommended this change to the 2002 Legislature and was unsuccessful in gaining its approval. It is important that this change be considered again to provide consistency in Minnesota's feedlot program by maintaining administration of the program within the state.

Section E. Future Feedlot Program Activities

The MPCA has been fortunate to have received additional resources in 2001 and the cooperation and commitment of other partners. The combined resources help ensure an effective program that serves the needs of both the farm economy and the environment. Yet, many existing challenges remain to be met and new ones are emerging. This section discusses some of the main areas that the MPCA must address in the next four (4) years.

1. Follow-through on Open Lot Agreements. The revised feedlot rules established a program, called the Open Lot Agreement (OLA), to eliminate run-off from small Minnesota farms. The OLA allows feedlot owners to correct pollution problems over a several year period without being penalized for passive runoff from the open lots. To be successful, the MPCA and delegated counties must clearly communicate feedlot owner advantages of entering into the agreement and, also, conduct regular follow-up site visits to monitor compliance with the different stages of the agreement. In Fiscal years 2003 and 2004, the MPCA expects to spend nearly 3000 staff hours on assisting producers relative to open lot agreements and the repair of existing problems.

2. Creating new approaches to environmental gains through partnerships with agencies and producers groups. The MPCA actively promotes creative collaborations and projects with livestock producer groups and agencies related to agricultural production. More doors are opening to opportunities and creative ways for MPCA to accomplish its mission. For example, the MPCA had the opportunity to assist Minnesota Milk Producers in designing their own self-regulatory Environmental Quality Assurance plan. Another opportunity is using third-party vendors to assist feedlot owners in complying with state rules, such as visiting open lot sites and guiding them in corrective actions or completing inspections/audits and working directly with the producer to correct any problems. Third party vendors would augment the work done by local government and state agencies in bringing facilities into compliance. The challenge for MPCA in this pursuit is ensure consistency between vendors and the governmental bodies in achieving environmental protection.

3. Develop proactive component to managing feedlots in harmony with social and environmental considerations. In September 2002, the Environmental Quality Board found the Generic Environmental Impact Statement on Animal Agriculture (GEIS) adequate. The GEIS documented that the rural landscape is undergoing dramatic changes in areas such as land use, demographics, economic structure and culture. The MPCA must be a partner in the on-going efforts to devise policies, strategies and regulations to address the larger community factors while continuing to protect the environment. Economic incentives to ensure a vital agriculture sector are important. Equally important is a commitment to continue research on potential impacts associated with feedlots and cost-effective solutions to these impacts. Financial viability and environmental protection are compatible.

4. Maintain a strong county feedlot program. The county feedlot program has proven effective in ensuring good service to feedlot owners and to maintain an effective regulatory field presence. With increasing emphasis on inspections and compliance, County Feedlot Officers (CFOs) need education and training to make competent farm site assessments and to be a source for discussing technical options and solutions

with feedlot owners and operators. The program must be accountable and reflect the increased role of counties in feedlot regulation and the funds they receive for administration. Since November 1999, the MPCA increased its efforts to hold quarterly meetings with feedlot officers across the state, and to hold one annual meeting for developing and maintaining program skills. Additionally, the MPCA provides one-on-one assistance to feedlot officers.

5. Rising importance of land application of manure component of animal agriculture. The GEIS highlighted the importance of good manure application practices to environmental protection. Land application of manure at feedlots has the greatest effect on water quality (positive or negative), particularly with the trend to larger animal feedlot operations. Manure is more likely to be applied at higher rates at larger feedlots because they may have limited acreage on which to apply their manure and the cost to transport manure long distances is expensive. These changes increase the need for MPCA to develop a Geographic Information System (GIS) capable of mapping land application sites to evaluate potential impacts and assist in the review of manure management plans and land application records.

6. Improve approaches to address issues associated with pasture operations and, specifically, winter-feeding. Producers have asked that guidance polices be established for winter-feeding setups. The MPCA is working with the Cattlemen's association and pasture experts to collect data and develop guidance for winter-feeding operations on pasture, crop stubble, and forage grain areas. In November 2002, the MPCA with assistance from experts from the University of Minnesota and the U.S. Department of Agriculture developed a Guidance Factsheet for Best Management Practices in siting and managing winter-feeding operations. The next steps for 2003 include gathering data, further evaluating the 2002 Guidance document, and assessing the need for any rule revisions. The MPCA will be in contact with the legislature to keep them up to date on our activities in this area.

7. Develop new and streamlined approaches to enforcement component of program. Current mechanisms and strategies for initiating enforcement actions are cumbersome. Improvements currently in development to the compliance/enforcement process are a checklist (to be completed by March 2003) for use during on-site inspections to provide a thorough and consistent inspection process and generic enforcement documents for use at sites with similar violations. The enforcement process needs further review for additional ways to streamline the process while maintaining the integrity of the program.

APPENDICES

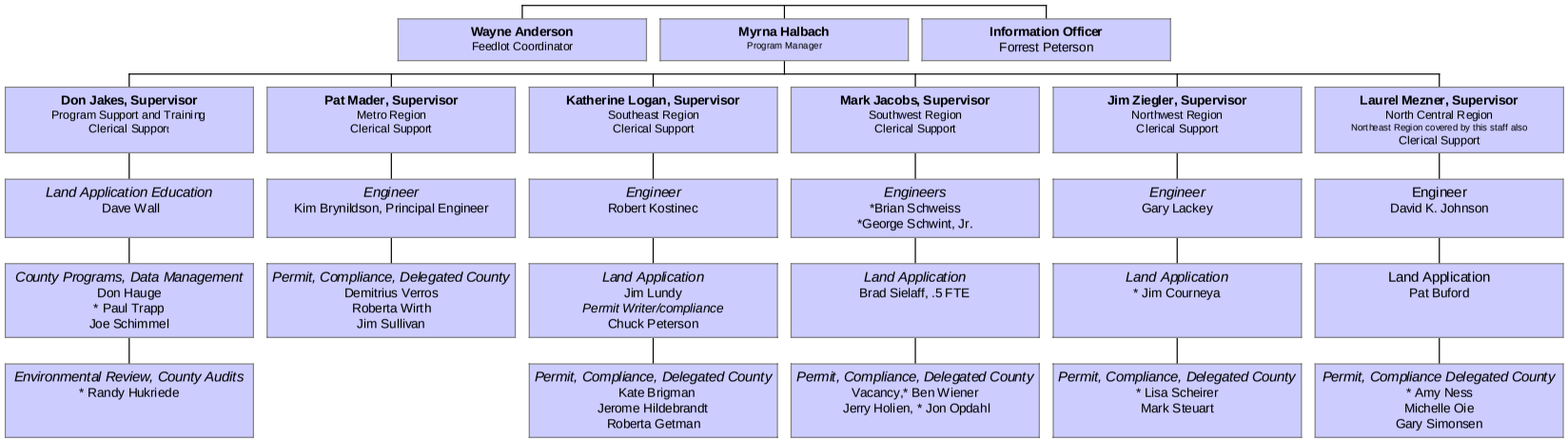
1. Organizational Structure for MPCA Feedlot Program Implementation
2. Map Showing MPCA Compliance/Permit Staff Distribution
3. Approved Delegated County Grant Requests (1995 – 2002)
4. Map showing registered feedlots by County
5. Map showing NPDES permits by MPCA
6. Response to Office of Legislative Auditor's Feedlot Program Recommendations
7. Letters from the U.S. Environmental Protection Agency to MPCA

APPENDIX 1

Organizational Structure for Feedlot Program Implementation

Rod Massey, Division Director

Regional Environmental Management Division

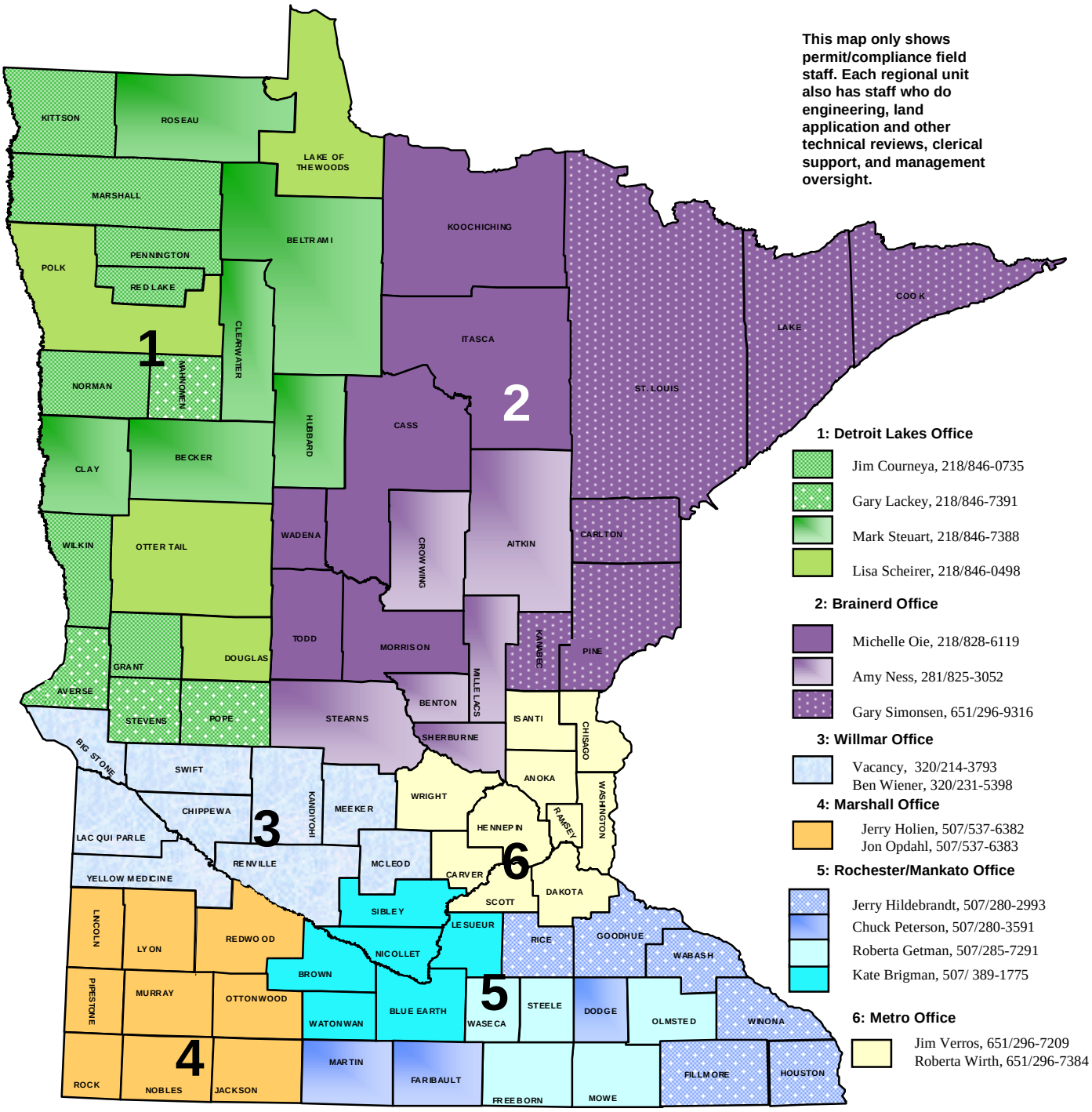


*Denotes 2001 FTE Appropriation

APPENDIX 2

Feedlot Permitting/Compliance Field Staff

(Shows Base Location)



Minnesota Pollution Control Agency
Call toll free: 1-877-333-3508

November 2002

APPENDIX 3

County Feedlot Grant Program
State of Minnesota

History of County Feedlot Delegation and Grant Program

Program Year		1995	1996	1997	1998	1999	2000	2001	2002
Number of Counties Delegated		33	33	43	46	50	52	52	55
Award Amount Per Feedlot	***Base**	$5	$15	$15	$30	$40	$50	$50	$50
	***Inventoried**	$15	$25	$25	$35	$50	$80	$80	$80
Total Amount Awarded		$239,535	$376,270	$494,390	$607,665	$932,090	$1,463,666	$1,696,980	$1,980,563

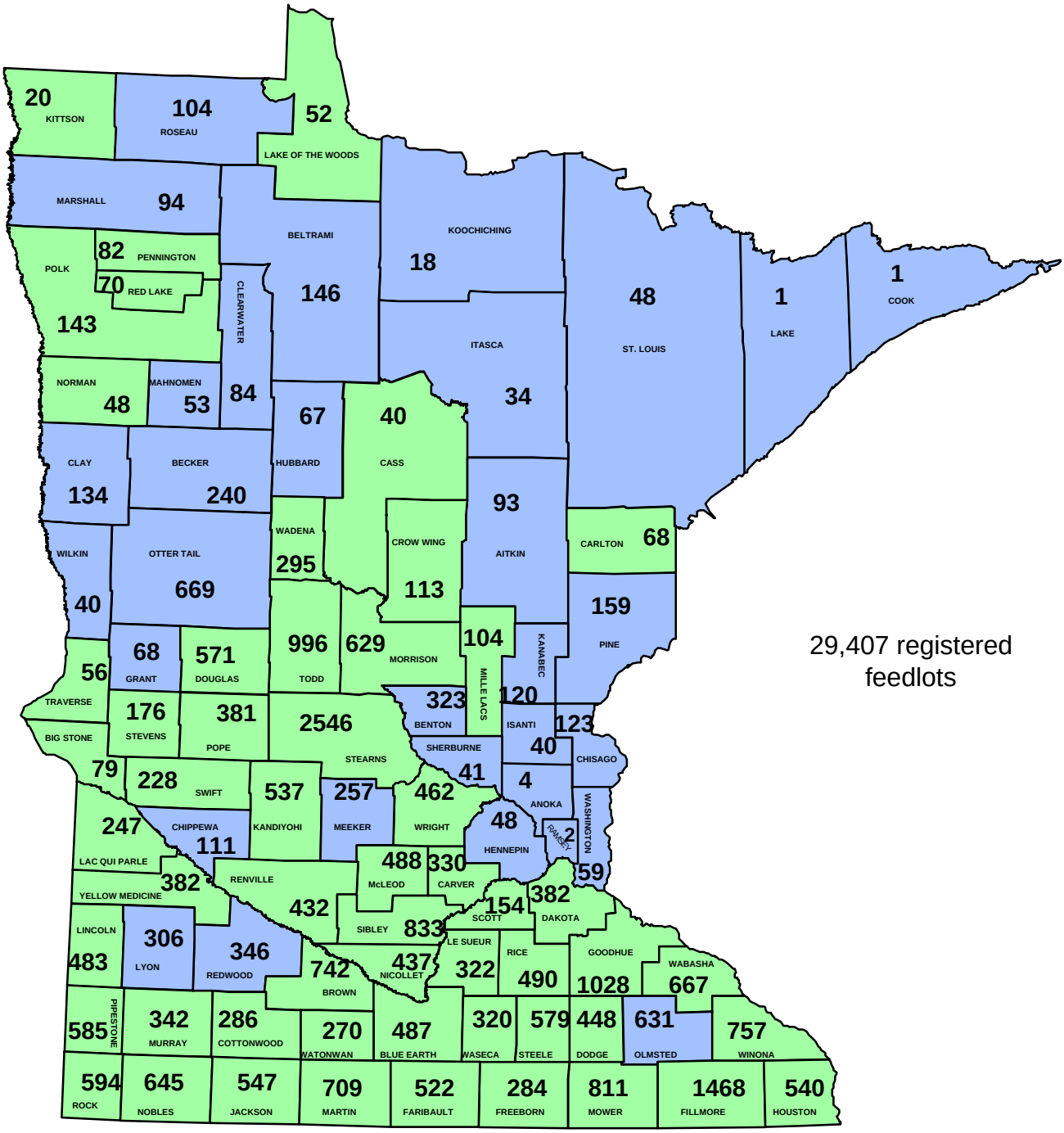
*Delegated counties are awarded funding at one of two-levels (Base and Inventoried). Counties that have conducted inventories and conducted site visits receive the higher rate (Inventoried). In 2002, counties were guaranteed a minimum of $7500.

2002 County Feedlot Grant Summary

Delegated County	Number of Feedlots	Award Amount	Delegated County	Number of Feedlots	Award Amount	Delegated County	Number of Feedlots	Award Amount
Big Stone	<100	$7,500	**Lac Qui Parle**	<100	$7,500	**Rice**	1,117	$89,360
Blue Earth	459	$36,720	**Lake of the Woods**	<100	$7,500	**Rock**	618	$49,440
Brown	578	$45,360	**Le Sueur**	333	$26,010	**Scott**	271	$21,680
Carlton	280	$16,040	**Lincoln**	472	$37,760	**Sibley**	650	$52,000
Carver	417	$33,360	**Martin**	774	$61,920	**Stearns**	2835	$226,840
Cass	<100	$7,500	**McLeod**	400	$32,000	**Steele**	560	$44,800
Cottonwood	294	$23,520	**Mille Lacs**	214	$10,700	**Stevens**	178	$8,900
Crow Wing	<100	$7,500	**Morrison**	637	$56,260	**Swift**	208	$16,640
Dakota	335	$26,800	**Mower**	738	$59,040	**Todd**	818	$59,980
Dodge	440	$35,200	**Murray**	429	$34,320	**Traverse**	<100	$7,500
Douglas	532	$42,020	**Nicollet**	419	$33,520	**Wabasha**	673	$53,840
Faribault	473	$37,840	**Nobles**	494	$39,760	**Wadena**	249	$19,920
Fillmore	953	$66,583	**Norman**	<100	$7,500	**Waseca**	560	$26,560
Freeborn	432	$34,560	**Pennington**	<100	$7,500	**Watonwan**	262	$18,580
Goodhue	1013	$60,400	**Pipestone**	585	$46,800	**Winona**	805	$64,400
Houston	610	$48,640	**Polk**	<100	$7,500	**Wright**	586	$30,050
Jackson	583	$44,150	**Pope**	342	$27,360	**Yellow Medicine**	380	$30,400
Kandiyohi	482	$36,590	**Red Lake**	<100	$7,500			
Kittson	<100	$7,500	**Renville**	393	$31,440			

APPENDIX 4

Number of Registrations Received by County *



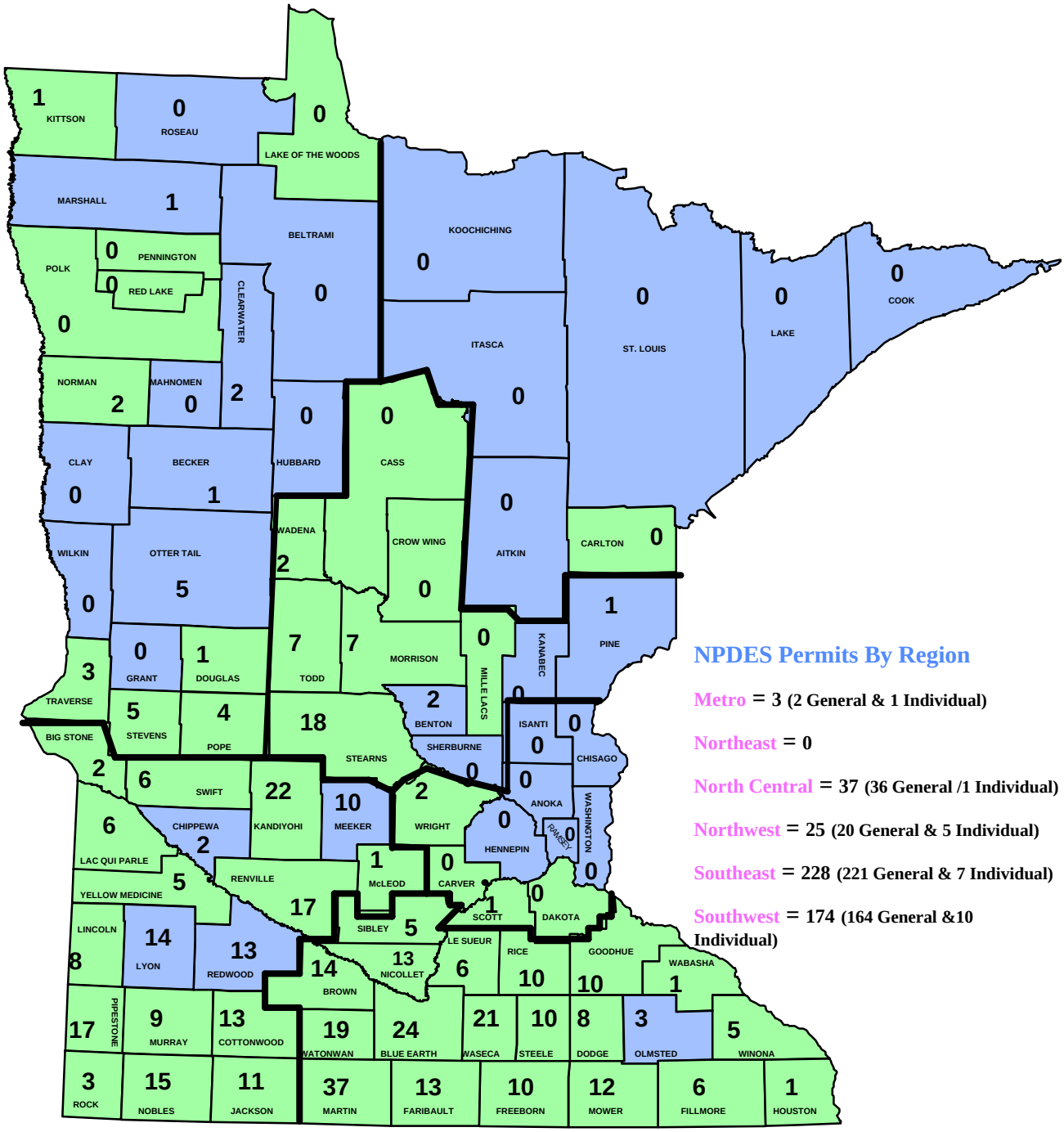
29,407 registered feedlots

Green shaded counties are in the MPCA County Feedlot Program

***Numbers based on available information as of November 8, 2002. Revised map based on data entry will be available January 15, 2003.**

APPENDIX 5

NPDES Permits Issued by MPCA *



NPDES Permits By Region

Metro = 3 (2 General & 1 Individual)

Northeast = 0

North Central = 37 (36 General /1 Individual)

Northwest = 25 (20 General & 5 Individual)

Southeast = 228 (221 General & 7 Individual)

Southwest = 174 (164 General &10 Individual)

Green shaded counties are in the MPCA County Feedlot Program

***Estimated 566 facilities need an NPDES Permit based on December 31, 2001, data.**
Numbers based on available information as of November 8, 2002.
More Permits under review for issuance by December 2003.

APPENDIX 6

ANIMAL FEEDLOT REGULATION: A PROGRAM REPORT PREPARED BY THE OFFICE OF LEGISLATIVE AUDITOR, JANUARY 1999

The MPCA provides the following response to recommendations contained in the Office of Legislative Auditor's report of January 1999.

PROGRAM ACTIVITY	RECOMMENDATION	MPCA RESPONSE	MPCA PROGRESS
Permitting			
	MPCA conduct more site visits during and after construction work.	MPCA and county feedlot officers are required to visit construction sites.	Required in 2001. Inspections have doubled from 225 in 2001 to 527 in the first 9 months of 2002.
	MPCA should conduct more site visits prior to issuing feedlot permits, particularly in environmentally-sensitive areas.	MPCA and county feedlot staff are required to visit all sites prior to permit issuance.	Required in 2001. - 95 percent of sites are inspected prior to permit issuance.
	MPCA should strive to provide a thorough review of permit applications and ensure that required documents are filed with the MPCA in a timely way.	MPCA developing review checklists and filing requirements.	To be fully implemented in March 2003 by MPCA and county feedlot staff.
	MPCA should notify feedlot owners with expired interim permits and take appropriate actions.	Using DELTA database, MPCA initiated tracking in 2002. Counties are using spreadsheets supplied by MPCA.	To be fully implemented in July 2003 by MPCA and county feedlot staff.
	MPCA also needs to develop a tracking system to make sure that feedlot owners follow through on permit requirements.	MPCA using DELTA database for tracking feedlot compliance with permit requirements.	Tracking began in 2001. Evaluation of data to begin in February 2003 as permits have two year timeframes to complete tasks.
	MPCA should strive to reduce its permitting backlog and reduce the amount of time producers wait for their applications to be reviewed.	MPCA eliminated 95 percent of backlog in 2000/2001 and reduced permit issuance time by 50 percent in 2002.	Focused backlog reduction in 2000 and 2001. Reduced permit review time focus since October 2001.
	MPCA should track timeliness of its performance in issuing permit applications.	MPCA tracking performance.	Tracking initiated in 2001. Since initiated in October 2001, permit issuance within 120 days of receiving a complete permit application was greater than 90 percent. This timeframe reflects an improvement from 49 percent prior to October 2001.

PROGRAM ACTIVITY	RECOMMENDATION	MPCA RESPONSE	MPCA PROGRESS
Complaint Handling and Enforcement			
	MPCA should require regular status reports from investigators to ensure progress is being made on water quality enforcement cases.	MPCA began status reports from compliance staff in September 2002, as part of the development of an electronic reporting.	MPCA will be using electronic reporting by March 2003.
	MPCA should have more staff resources assigned to water quality enforcement activities in order to reduce the backlog and speed up the resolution of cases.	MPCA requested reallocation of 3 FTE in 2001 Legislative session.	Increased from 3 FTE in 1998 to 6 FTE in 2002; new staff hired by February 2002.
	MPCA should ensure that regional offices are consistent in their willingness to investigate potential water quality violations.	MPCA assigned Feedlot compliance coordinator and Feedlot program manager with this responsibility in October 2000. Additionally, Minn. R. part 7020.1600 requires more compliance efforts from delegated counties.	Ongoing effort to ensure consistency. This effort will require additional efforts as the feedlot program at the MPCA and delegated counties is ramped up and new staff receive training.
Ongoing Oversight of Feedlots			
	Legislature weigh the need for additional county inventories for regulatory purposes along with the budget request it will receive for the Generic Environmental Impact Statement on Animal Agriculture.	The need for county inventories was replaced by a registration and inspection program in October 2001 (Minn. R. ch. 7020).	Revised feedlot rules of October 2000 establish this protocol. Over 29,000 feedlots are registered as of November 2002.
	Policymakers should consider alternative ways of reducing water pollution emanating from small feedlots, including the need for additional public funds and cost-effective ways of achieving a reduction in water pollution.	The 2001 Legislature increased funding for cost-share at feedlots. Minn. R. ch 7020 provides producers of small feedlots the option of signing an Open Lot Agreement and receive a 10-year compliance window or use an interim permit to correct situations in two years.	**Required compliance standards:** October 2005 – 50 percent reduction in runoff from open lots October 2010 – 100 percent compliance **MPCA Goal:** 7500 open lot agreements by 2005 As of January 2002, 334 open lot agreements had been signed. This represents about 4 percent of the MPCA's goal. Producers have until October 1, 2005, to sign the Open Lot Agreement.

PROGRAM ACTIVITY	RECOMMENDATION	MPCA RESPONSE	MPCA PROGRESS
MPCA Oversight of Counties			
	MPCA should provide more effective oversight of county feedlot programs. MPCA should ensure that counties are meeting the financial requirements set forth in law and should establish expectations and standards for county feedlot programs.	In 2000, increased funding from $40 to $50 per feedlot for no inventory, and from $50 to $80 per feedlot for Level II inventory. A Level II inventory requires a site visit of any feedlot before it may be listed. In 2001, provided for minimum funding for counties of $7500.	**Legislature should continue one-time biennial appropriation to counties in 2003 session.** **MPCA Goal:** complete 10 county program reviews per year. In 2002, the MPCA began a formal program review at the county level. Five program reviews were completed in 2002.
	MPCA should encourage, and the Legislature should support, the participation of additional counties in the feedlot program.	Stable funding needed to support additional delegated counties.	Counties and MPCA working together to evaluate funding formula for proposal in Legislative session 2004. Funding is critical to maintaining a strong county presence: 1995 - 33 delegated counties ($239,000) 1998 – 47 delegated counties ($607,665) 2001 – 55 delegated counties ($1,696,980)
	MPCA should attempt to ensure that county feedlot officers receive adequate training.	Training events in 2001/2002 with formal Feedlot Academy in development.	Training events: March 2001/October 2002/May 2003. **MPCA Goal:** Academy begin in June 2003.
Implementation Options			
	MPCA should make every possible effort to implement the recommendations in this report using existing resources.	The MPCA provided a needs analysis for additional resources to 2001 Legislature in its November 15, 2000, "Report to Legislature on: The Minnesota Pollution Control Agency's Ability to Meet 60-day Issuance Deadline for Feedlot Permits".	2001 Legislature approved funding for 9 additional FTEs for the MPCA to improve its response to permit issuance, compliance activities, and oversight of delegated counties.
	MPCA and counties probably need additional resources to address certain problems in feedlot regulation.	MPCA requested additional resources from the 2001 Legislature in terms of increased staffing for the MPCA and funding for delegated counties.	2001 Legislature approved an additional 9 FTE for the MPCA and a one-time biennial funding for counties in the amount of $500,000.
	It is unclear how much additional resources MPCA may need to improve its feedlot program.	The MPCA provided a needs analysis for additional resources to 2001 Legislature in its November 15, 2000,	See Appendix 8 - resource review

PROGRAM ACTIVITY	RECOMMENDATION	MPCA RESPONSE	MPCA PROGRESS
		"Report to Legislature on: The Minnesota Pollution Control Agency's Ability to Meet 60-day Issuance Deadline for Feedlot Permits".	
	Prior to request for additional staff, MPCA should provide the Legislature with more information on its estimated workload and the average amount of staff time it takes to complete major tasks.	The MPCA provided a needs analysis for additional resources to 2001 Legislature in its November 15, 2000, "Report to Legislature on: The Minnesota Pollution Control Agency's Ability to Meet 60-day Issuance Deadline for Feedlot Permits".	See Appendix 8 - resource review
	Before appropriating any additional funds to increase MPCA staffing, the Legislature should consider whether funds from other MPCA activities could be permanently reallocated to feedlot regulation.	The MPCA reallocated 3 FTE for activities related to the feedlot program.	The 3 FTEs were instrumental in issuing 229 NPDES permits from June 2001 through December 2001.

APPENDIX 7

Letters from U.S. Environmental Protection Agency to MPCA - Attached

Minnesota law provides that, "[f]or the purpose of feedlot permitting, manure that is land applied ... must not be considered a discharge into waters of the state, unless the discharge is to waters of the state, as defined by section 103G.005, subd. 17, except type 1 or type 2 wetlands, as defined in section 103G.005, subd. 17b, and does not meet discharge standards established for feedlots under agency rule." *See* Minn. Stat. §116.07, subd. 7(o). This provision raised a question about MPCA's authority to administer its NPDES program for CAFOs in conformance with 40 CFR, section 123.1(g)(1).

To the extent the Minnesota Legislature may have intended for Minn. Stat. §116.07, subd. 7(o), to provide relief from requirements, albeit unspecified ones, the law provides no relief to a person who applies manure to land and, either during or as a result of the manure application, discharges to waters of the state in a manner that does not meet discharge standards[6].

Minnesota rules contain several standards applicable to discharges that may result from the application of manure to land. First, under Minn. R. 7020.2225, subp. 1, item A, subitem (1), manure (and process wastewater) must not be applied to land in a manner that will result in a discharge to waters of the state during the application process. This subitem is more stringent than 40 CFR, section 123.1(g)(1), because it prohibits all discharges during the land application process, even those under the control of a person who possesses an NPDES permit. Second, Minn. R. 7020.2225, subp. 1, item A, subitem (2), prohibits the application of manure (and process wastewater) to land in a manner that will cause pollution of waters of the state due to manure-contaminated runoff. Under Minnesota law, "pollution of water" is defined to mean "(a) the discharge of any pollutant into any waters of the state or the contamination of any waters of the state so as to create a nuisance or render such waters unclean, or noxious, or impure so as to be actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, agricultural, commercial, industrial, recreational or other legitimate uses, or to livestock, animals, birds, fish or other aquatic life; or (b) the alteration made or induced by human activity of the chemical, physical, biological, or radiological integrity of waters of the state." *See* Minn. Stat. §115.01, subd. 13. For discharges of manure-contaminated runoff that cause pollution, this subitem is more stringent than 40 CFR, section 123.1(g)(1), because it

---

[6] Minnesota law defines the term "standards" to include effluent standards, effluent limitations, standards of performance for new sources, water quality standards, pretreatment standards, and prohibitions. *See* Minn. Stat. §115.01, subd. 19.

prohibits all such discharges, even those under the control of a person who possesses an NPDES permit.

The discharge standard in subitem (2) appears not to apply to three types of runoff: (1) that which does not contain manure, (2) that which contains manure but does not enter waters of the state, and (3) that which contains manure and enters waters of the state but does not cause pollution of the waters. An exclusion as described under (1) or (2) would not be problems as a matter of federal law since, for the purpose of the present analysis, 40 CFR, section 123.1(g)(1), imposes no requirement on approved states with respect to runoff that does not enter waters of the United States or runoff that enters waters of the United States but does not contain pollutants from CAFO manure or wastewater. Our analysis of an exclusion as described under (3) is presented below.

In his August 6, 2001, letter, the Minnesota Attorney General provided his opinion that Minn. Stat. §116.07, subd. 7(o), does not modify the prohibition against unpermitted discharges from point sources, including CAFOs, in Minn. R. 7001.1030, subp. 1. Consistent with this opinion, USEPA, Region 5, finds that for the purpose of Minn. Stat. §116.07, subd. 7(o), Minn. R. 7001.1030, subp. 1, contains a discharge standard for feedlots that are CAFOs.

According to the Attorney General, "*any* discharge from an unpermitted CAFO would not 'meet discharge standards established for feedlots under agency rule' (emphasis added)." Regarding releases of pollutants following application of manure or wastewater to land, the Minnesota rules define the term "discharge" to mean, "the addition of a pollutant to waters of the state, including a release of manure, manure-contaminated runoff or process wastewater from ... a land application site by ... any ... means." *See* Minn. R. 7020.0300, subp. 9c. In the record supporting establishment of this definition, MPCA expressed its intent that the term "discharge" have a broad meaning. It said the term includes "animal manure or manure-contaminated runoff from a ... land application site ... that enters any water of the state *in any quantity or concentration* by any means." (emphasis added). *See SONAR* at pp. 67-68.

Due to the broad meaning of the term "discharge" under Minnesota rules and in light of the August 6, 2001, statement from the Minnesota Attorney General, USEPA, Region 5, finds that a discharge of manure-contaminated runoff from land application activities under the control

of an unpermitted CAFO is subject to Minn. R. 7001.1030, subp. 1, even if the runoff does not cause pollution of waters of the state[7].

For the forgoing reasons, USEPA, Region 5, hereby approves the revision to the Minnesota NPDES program caused by enactment of Minn. Stat. §116.07, subd. 7(o).

F. Fines for discharges from stockpiles and land application of manure.

Minnesota law provides that, "[f]or the purpose of feedlot permitting, a discharge from land-applied manure or a manure stockpile that is managed according to agency rule must not be subject to a fine for a discharge violation." *See* Minn. Stat. §116.07, subd. 7(n). This provision raised a question about whether MPCA retains adequate authority to administer its NPDES program for CAFOs in conformance with 40 CFR, section 123.27. In part, this regulation requires states with approved NPDES programs to have authority to assess, or sue to recover in court, civil penalties and to seek criminal remedies for violations of NPDES program requirements.

(Due to the similarities between this provision and Minn. Stat. §116.07, subd. 7(o), USEPA, Region 5, will not repeat the analysis presented in E. above.)

According to the August 6, 2001, letter from the Minnesota Attorney General, "[a]ny CAFO that discharges without an NPDES permit would not be being 'managed according to agency rule.' As a result, the statute would not apply to a discharge of pollutants from land-applied manure from an unpermitted CAFO. The statute would similarly not apply to a discharge from a permitted CAFO that was not in compliance with permit terms and conditions." Instead of relieving CAFOs from the dual obligations to obtain permits prior to any discharge and then discharge from stockpiles and land application activities only in compliance with the terms and conditions of their permits, the Attorney General stated that Minn. Stat. §116.07, subd. 7(n),

---

[7] CAFO owners or operators who discharge manure-contaminated runoff from land application activities but do so in compliance with the terms and conditions of their NPDES permits have a shield from USEPA and citizen enforcement under the Clean Water Act, section 402(k). According to the August 6, 2001, letter from the Minnesota Attorney General, Minn. Stat. §116.07, subd. 7(n), establishes a similar shield for the purpose of Minnesota law.

simply establishes a "permit-as-a-shield" defense for permitted CAFOs. (*See* footnote seven for information on this defense.) In this way, Minnesota law is similar to the Clean Water Act, section 402(k).

In light of the statement from the Minnesota Attorney General, USEPA, Region 5, finds that Minn. Stat. §116.07, subd. 7(n), does not undermine MPCA's authority to administer its NPDES program for CAFOs in conformance with 40 CFR, section 123.27. The revision to the Minnesota NPDES program caused by enactment of this provision is hereby approved.

II. **Disapproved Provision.**

Minnesota law provides that, "[u]nless the upgrade is needed to correct an immediate public health threat ..., the [MPCA] may not require a feedlot operator: (1) to spend more than $3,000 to upgrade an existing feedlot with less than 300 animal units unless cost-share money is available to the feedlot operator for 75 percent of the cost of the upgrade; or (2) to spend more than $10,000 to upgrade an existing feedlot with between 300 and 500 animal units unless cost-share money is available to the feedlot operator for 75 percent of the cost of the upgrade or $50,000, whichever is less." *See* Minn. Stat. §116.07, subd. 7(p). This provision raised questions about whether MPCA retains adequate authority to administer its NPDES program for CAFOs in conformance with 40 CFR, sections 123.25(a)(1) and (15) and 123.27. In part, these regulations require states to have adequate authority to incorporate Clean Water Act standards into NPDES permits. They also require states to have adequate authority to force CAFOs to comply with NPDES program requirements.

For some of the feedlots that are defined as CAFOs under Minn. R. 7020.0300, subp. 5a, as well as certain feedlots that MPCA might designate as CAFOs on a case-by-case basis[8], USEPA, Region 5, finds that Minn. Stat., §116.07, subd. 7(p), undermines MPCA's authority to administer its NPDES program for CAFOs in conformance with the federal regulations cited

---

[8] Under Minn. R. 7020.0300, subp. 5a, Minnesota defines the term "CAFO" in accordance with 40 CFR, section 122.23. In addition to defining certain animal feeding operations as CAFOs, paragraph (c) in that federal regulation provides authority for other operations to be designated as CAFOs on a case-by-case basis.

above. Specifically, we find that MPCA does not have adequate authority for feedlots that are either defined or may be designated as CAFOs and have more than 300 but less than 500 animal units as that term is defined in Minnesota law and rules. We also find that MPCA does not have adequate authority for feedlots designated as CAFOs and having fewer than 300 animal units. These findings are based on the fact that the limits on the amount of money MPCA may require these CAFOs to spend, as well as the requirement for taxpayers to incur part of the cost for pollution control devices or practices at the CAFOs, may prevent MPCA from requiring some CAFOs to comply with the Clean Water Act.

For the forgoing reasons, the revision to the Minnesota NPDES program caused by enactment of Minn. Stat. §116.07, subd. 7(p), is hereby disapproved[9].

---

[9] Even though USEPA, Region 5, is disapproving this provision, readers are advised that government agencies can continue to provide cost-share dollars to CAFOs where allowed under applicable law.