

Office Memorandum

DATE : April 2, 2004

TO : MPCA Feedlot Staff
Delegated County Feedlot Officers

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Regional Environmental Management Division

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SUBJECT : Policy 2004-01 – Multiple Site Determination

Policy 2004-01 addresses how the Minnesota Pollution Control Agency (MPCA) staff and delegated counties will determine when multiple feeding operations under common ownership are considered one feeding operation and when they are considered separate feeding operations for purposes of implementing federal feedlot regulations. State regulations do not require combining feedlots under common ownership for regulatory purposes.

The Minnesota Pollution Control Agency refers to the Code of Federal Regulations (CFR) for determining when multiple facilities under common ownership are to be considered as one facility.

The CFR 122.23 (b) (1) (April 2003) States:

Animal feeding operation (“AFO”) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (i) Animals (other than aquatic 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
- (ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

The February 12, 2003, Federal Register Rules preamble to the Rules for Animal Feeding Operations states “Therefore, EPA has chosen not to include the land application areas at an animal feeding operation within the definition of an AFO or CAFO in the final regulations.”

The CFR 122.23 (b)(2) (April 2003) States:

Concentrated animal feeding operation (CAFO) means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO in accordance with paragraph (c) of this section.

Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for disposal of wastes.

Minn. R. 7020.0300 uses the federal definition for CAFO:

Subp. 5a. **Concentrated animal feeding operation or CAFO.** "Concentrated animal feeding operation" or "CAFO" means animal feedlots meeting the definition of a CAFO in Code of Federal Regulations, title 40, section 122.23.

When interpreting the above CFR, the MPCA uses the definition of owner from Minn. R. 7020.0300, subpart 17: "Owner" means all persons having possession, control, or title to an animal feedlot or manure storage area.

MPCA Interpretation of Federal Regulations

The MPCA's interpretation of the above CFR is as follows:

- If there are two or more AFOs under common ownership that list the same acreage as being available for land application, all of the animals at the AFOs would be counted to determine if the AFOs meet the thresholds for a CAFO.
- If these separate AFOs were to distinguish the acreage to receive manure from each operation without any duplication of acreage being mentioned in the manure management plan, then these AFOs could be considered separate AFOs for regulatory purposes, provided that they do not adjoin each other and do not commingle manure in a shared manure handling system.
- If multiple AFOs under common ownership share common manure handling system or mix manure from multiple AFOs then these AFOs would be considered one facility for regulatory purposes. This does not apply when manure is transferred to a third party who collects from many separately-owned AFOs then manages the manure as a separate entity. The MPCA does not intend to combine AFOs where the driver is the same but separate equipment is used or where the same piece of equipment (i.e. manure spreader, honeywagon, tanker) is used to collect manure at separate AFOs at separate events and the manure from multiple AFOs is not combined in the piece of equipment.
- If multiple AFOs adjoin each other then these AFOs would be considered one facility for regulatory purposes. When AFOs are next to or share a common border with another AFO with common ownership, then they would be considered to adjoin each other. AFOs under common ownership could also be considered to adjoin each other if they were separated only by a roadway, fence line or similar boundary.

In situations where the AFOs under common ownership are on adjoining parcels, best professional judgment shall be exercised as to whether the AFOs themselves adjoin each other. These decisions are subject to the appeal and dispute resolution processes mentioned at the end of this policy.

- When AFOs under common ownership are on parcels that do not adjoin, the AFOs will not be considered to adjoin.

Medium CAFO Determination

The Environmental Protection Agency's (EPA) Permitting Guide, dated December 2003, indicates that an AFO is a Medium CAFO by definition if pollutants are discharged in one of the following ways (40 CFR 122.23 (b)(6):

1. Into waters of the United States through a man-made ditch, flushing system, or other similar man-made device, or
2. Directly into waters of the United States that originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the confined animals. Medium-sized AFOs where stormwater from the production area contacts animals or manure and then discharges to surface water through a man-made device are defined as Medium-sized CAFOs under this provision.

An AFO is defined as a Medium CAFO only after an inspection. The inspection results must find that conditions one (1) or two (2) exist.

If the facility discharges using a method other than those above it can be designated a CAFO by being a significant contributor of pollutants to waters of the United States. If the facility does not discharge to waters of the state from the production area, it is not defined as a Medium CAFO. Procedures outline in the MPCA's CAFO Designation Criteria and Process (1999) must be followed when considering whether a Medium AFO should be designated a CAFO.

Processing Medium CAFO sites

It is the MPCA's policy that Medium CAFO sites shall be provided an opportunity to eliminate the situation that causes them to be considered a CAFO as determined by the above criteria. The MPCA staff and Delegated County Feedlot Officers shall process Medium CAFOs in the following manner:

1. The owners of those AFOs should be notified that they are being combined and identified as a Medium CAFO under state and federal rules, with specificity of the condition that leads to that determination.
2. If the condition is such that the owner can simply remove a device (i.e. inlet tile in an open lot), the owner shall be allowed to do so without applying for a permit. However, should more time be needed to eliminate the condition, the owner shall apply for an Interim Permit or an National Pollutant Discharge Elimination System Permit (NPDES) as appropriate, that allows reasonable opportunity to address the condition that makes them a CAFO. The EPA encourages states to

maximize the use of voluntary and other non-NPDES programs to support the efforts by medium and small operations to implement appropriate measures and correct problems that cause them to be defined or might cause them to be designated as CAFOs and thus be subject to permitting. The EPA has accepted Minnesota's use of an Interim Permit to correct the conditions under which a Medium AFO would be considered a Medium CAFO.

3. The MPCA staff and Delegated County Feedlot Officers will monitor the resolution of the conditions that made the Medium AFO a Medium CAFO. Upon addressing those issues, the AFO owner(s) shall be notified that they are no longer considered a Medium CAFO. The Medium AFO may still have runoff or other problems from the site that need to be addressed and should continue to work with the appropriate agencies to correct this situation.

Dispute Resolution

Should a determination be disputed by MPCA, a delegated county or producer, the MPCA staff and Delegated County Feedlot Officer shall call for a Permit Forum. The Permit Forum shall follow the standard procedures established in the Permit Forum guidelines. If through the Permit Forum agreement cannot be reached, the decision shall be moved to dispute resolution through the feedlot program manager.

A delegated county feedlot officer or MPCA staff may request a Permit Forum to gain assistance in making a determination at any time. The Permit Forum process shall be followed.

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