



**To: County Feedlot Officers and MPCA Feedlot Staff**  
**From: Bob Finley and MPCA Policy and Coordination Unit**  
**RE: Recommended approaches for administering feedlot runoff rules**  
**Date: September 28, 2005**

**Overview:** MPCA staff and CFOs should be guided by a principle of patient and active persistence, motivating producers to seek the assistance needed to correct problems and informing them of technical and financial assistance opportunities. We will focus our efforts where significant environmental gains can be made relative to invested time and resources by the agency/county and the feedlot operator. We will work most closely with feedlots that have the potential to create the most serious water quality impacts and where practical solutions and assistance are available.

**Background:** The purpose of the Open Lot Agreement (OLA) was to allow a more flexible and phased approach to regulating small existing open lot feedlots, which are mostly dairy and beef lots. Experience prior to 2000 had revealed that while formal enforcement of open lot runoff problems was rarely pursued, these smaller facilities often chose to “lay low” off the government radar screen, even reluctant to seek financial or technical assistance due to a fear of regulations. The OLA was proposed as a way to encourage producers to seek information and assistance for practical solutions, and to promote progress towards fixing open lot runoff problems in a reasonable and achievable way.

### **Recommended approaches:**

**Focus on highest priority sites** - Give the most attention to those feedlots that pose the greatest risk to water quality, regardless of whether or not they have signed up for the OLA. The environmental risk/priority of a site should be determined by evaluating both in-stream impairments and estimates of the pollutant loading to the water of concern. Pollutant loading is affected most by the type and length of downslope treatment areas such as grass buffers. Feedlot size and management also affect pollutant loading. The highest priority sites are where there is both a high loading and an established TMDL for bacteria, phosphorus or oxygen demand. High priority sites are also where high pollutant loadings occur (but a TMDL does not exist) and pollutant concentrations are high at the point of discharge into waters with aquatic life. The MPCA will be working during the upcoming months on guidance for conducting quick assessments of the relative environmental priority of any given feedlot.

**Work together with assistance agencies** - It is important that we work closely with the cost share and technical assistance agencies so that we get cost effective solutions implemented. Make producers aware of the financial and technical assistance opportunities which exist. Spend less time on project oversight where feedlots are working with assistance agencies. The MPCA will work with the NRCS, BWSR and MDA to align environmental priorities. The MPCA and MACFO will work with the Board of Water and Soil Resources to add technical assistance staff in targeted areas with open lot runoff problems. The MPCA will also look at ways of providing technical guidelines to producers who prefer to avoid using assistance agencies.

**Counties given flexibility** - The MPCA will require counties to include an inspection prioritization scheme in their work plan that is based largely on environmental risk and coordination with assistance programs. Counties can determine the degree to which their county will monitor and enforce progress with OLAs and interim permits, while considering the guidelines below and competing environmental priorities associated with manure application to cropland and other issues.



Recommendations and guidelines for dealing with producers signed up for the OLA and those not signed up for the OLA are described below.

**Not signed up for OLA** – The following recommendations are for addressing feedlots with open lot runoff problems where owners have not signed an OLA.

- **No sign-ups after Oct. 2005** - The deadline for completing the first phase fixes of the OLA is October 1, 2005. Therefore, new sign-ups for the open lot agreement will not be available after October 1, 2005, except in the case where all first phase fixes were completed prior to this date.
- **Don't ignore feedlots without OLAs** - Focus attention at sites where the most environmental gains can be achieved relative to the amount of time invested. Where the potential for environmental gains are similar at feedlots with and without OLAs, sites signed up for OLAs should NOT be given more compliance evaluation attention than sites without OLAs. The MPCA will avoid county work plan requirements that force the county to only focus on sites with OLAs.
- **Issue interim permits as time and priorities allow** - The primary permitting mechanism outlined in 7020 rules for sites without OLAs is an interim permit. Interim permits take more time to administer than OLAs, and therefore feedlot officers will need to prioritize which feedlots to focus on first. If runoff problems are fixed before the feedlot officer issues the permit, then no further action is needed. The MPCA will work to develop standard language for interim permits written to address open lot runoff problems.
- **Formal enforcement for worst situations** – A letter of warning, notice of violation or other enforcement option can be pursued. Generally hold off on enforcement actions if one or more of the following applies:
  - Producers are proceeding to make progress toward getting solutions installed (working with NRCS/SWCD or consultant or on own);
  - The feedlot is a low environmental priority; or
  - Producers can not obtain 75% cost share and they are proceeding to minimize runoff on their own with low cost improvements.

**Signed up for OLA** - The following recommendations are for addressing feedlots with open lot runoff problems where owners have signed an OLA.

- **Spend most time with high priority sites** - Wait until the high priority feedlots with and without OLAs have been fixed before spending much time with lower priority sites. At low priority sites, you may talk to the producers or send a letter reminding them that they are in the OLA program and explaining what is expected in this program.
- **Allow flexibility on the October 2005 fixes** – Where technical assistance is not sufficiently available to advise on the best approaches for the interim fixes required by October 2005, allow flexibility on the timeline. Also, it may make the most sense at many farms to complete all fixes at once, and therefore flexibility on the timeline may be warranted in such cases.
- **If no progress, move into interim permit** - If no progress is made with the OLA at high priority sites, and there are no indications that the producer is seeking assistance or intending to make progress, then move the producer into an interim permit approach for correcting the problems.
- **Formal enforcement in the worst situations** - A letter of warning, notice of violation or other enforcement options can be pursued. An example of when enforcement may be needed is when a high environmental priority open lot is moved from an OLA into an interim permit, and still no progress is made in accordance with the timeline in the interim permit even though 75% cost share is clearly available for that producer.