



AMENDMENTS TO RULES GOVERNING FEEDLOTS

CITIZENS' BOARD MEETING - APRIL 22, 2014



**Minnesota Pollution
Control Agency**

Wq-rule4-03v

FEEDLOT RULE REVISION TEAM

- Kim Brynildson, Tech. Coordinator
- Kevin Molly, Rule Coordinator
- Randy Hukriede, Feedlot Program Manager
- Wayne Cords, East Feedlot Unit, Supervisor
- Mark Jacobs, West Feedlot Unit, Supervisor
- Ann Cohen, Assistant Attorney General
- Samantha Adams, Feedlot Program
- Courtney Ahlers-Nelson, Feedlot Program
- George Schwint, Feedlot Program
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- Forrest Peterson, Communications

FEEDLOT REGULATION HISTORY

Purpose: To prevent pollution from feedlots from negatively affecting surface and groundwater in Minnesota

1970s: First Federal and State rules adopted to regulate feedlots

1990s: Rapid integration, consolidation and expansion of feedlots

2000: MN adopts major revisions to Feedlot Rules.

2011: MN legislature revises statute no longer requiring NPDES Permit for state's largest sites



AMENDMENT TO MINN. STAT. 116.07, SUBD. 7C.

Before 2011 Special Session (legislation passed in 1998):

NPDES permit required for all “large” feedlots

(i.e. over 1,000 AU or defined as Confined Animal Feeding Operation (CAFO))

After 2011 Special Session:

NPDES permit now only needed as
required by federal law.

Note: A feedlot owner may request
an NPDES permit



RULE AMENDMENTS NEEDED TO:

- Conform to 2011 limits on NPDES permitting authority
- Conform to other law changes made over past 14 years
- Make housekeeping changes (i.e. delete obsolete rules)
- Make clarifications

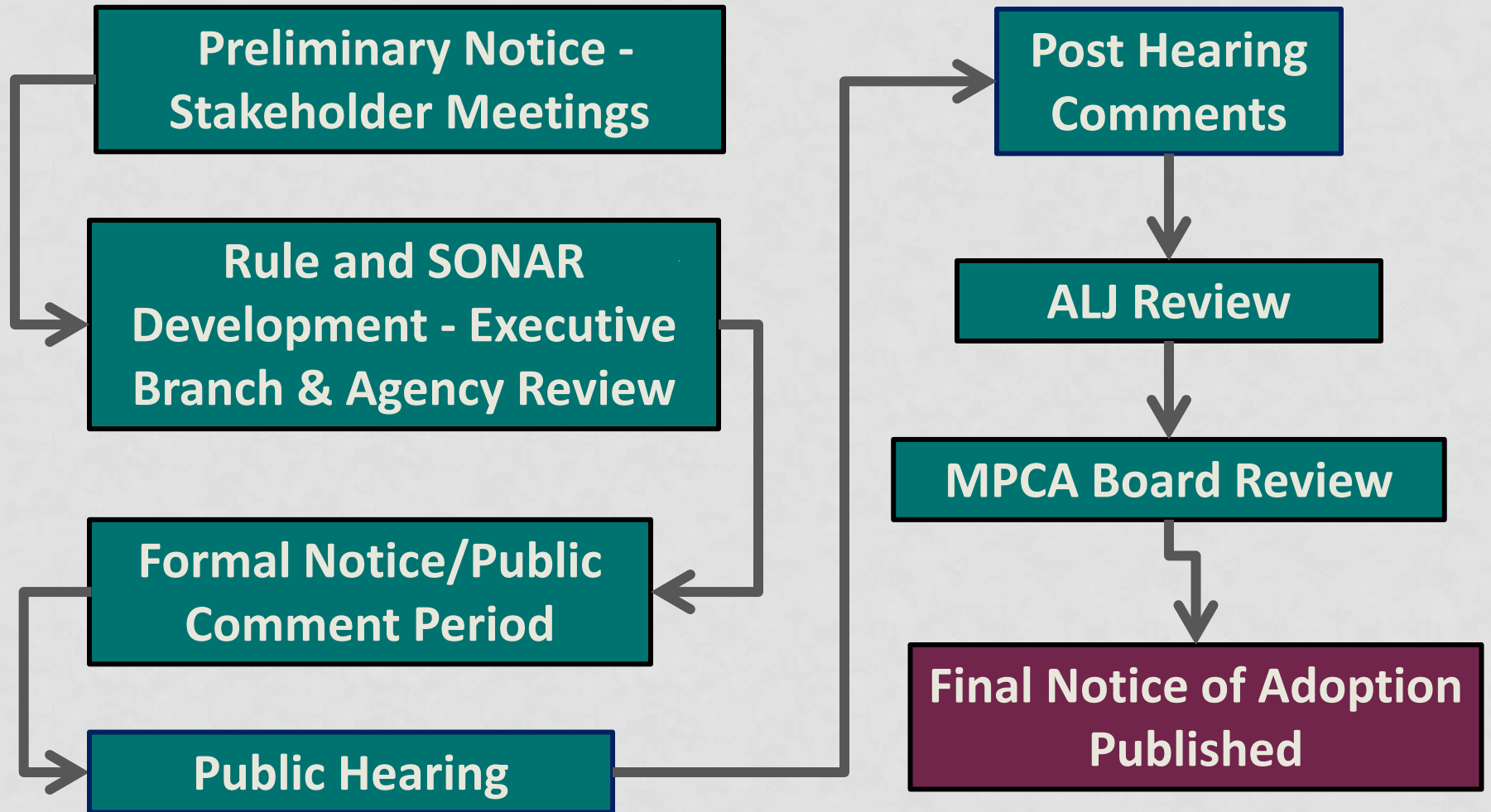


IMPACT OF 2011 LEGISLATIVE CHANGE & RULE AMENDMENTS

- Most feedlots in state will not be impacted by amendments
- Largest sites (CAFOs & over 1,000 AU) must choose between different operating permits
- Amended rules still protect surface and groundwater from pollution from feedlots

RULE DEVELOPMENT PROCESS

RULE REVISION PROCESS OVERVIEW



RULEMAKING HIGHLIGHTS

- Preliminary Notice – Dec. 19, 2011
- Public Info Meetings – Sept. 4, 2012 – Mankato
Sept. 7, 2012 – Waite Park
- Proposed rules published for comment in *State Register* – July 22, 2013
- Interactive Statewide Public Hearing – Sept. 9, 2013
- Post-hearing comments – Sept. 10 thru Oct. 7, 2013

ALJ REPORT

- Received Dec. 2, 2013
- Approved most proposed amendments, including proposal to retain SDS permit
- Disapproved 12 proposed amendments
- MPCA responded with corrections – Feb. 13, 2014
- Chief ALJ issued Order on Review of Rules approving all corrected rule amendments, except one – Feb. 24, 2014

**PROPOSED
RULE
AMENDMENTS**

SUMMARY OF RULE AMENDMENTS

- Changes to address issuance of NPDES permits based on federal law
- Add other state and federal law changes since last rule revision (2000)
- Delete outdated rules and other housekeeping
- Clarification of certain rules

NPDES PERMITTING CHANGES

Proposal: NPDES permit not required based on “size;”
SDS permit required for $\geq 1,000$ AU

Comments: Legislature intended that large feedlots
would not be required to have an operating permit
unless discharge occurs

Final Rule: SDS permits are required for feedlots
 $\geq 1,000$ AU

WATERS OF THE U.S. DEFINITION

Proposal: Add definition of “waters of the United States” based on CWA as required for federal permit

Comments: No definition for waters of the U.S. in CWA

Final Rule: Waters of the U.S. is as defined in Code of Federal Regulations, including any future changes

OTHER STATUTORY CHANGES: DEFINITION OF PASTURE

Proposal: Combine two statutory pasture definitions and clarify “concentration of animals” by reference to “agronomic rates”

Comments: Legislative language should be used without further clarification

Final Rule: Definition of Pasture will include only the definitions provided in statute

OTHER STATUTORY CHANGES

- No permit required for certain small feedlots
- Neighbor notification for >500 AU
- Shoreland restriction

CLARIFICATIONS

- Processing of Applications and Permits:
 - Modifications
 - Name of permit (“NPDES” v. “NPDES/SDS”)
 - “Owner” definition
- Discharges to Subsurface Waters
- Emergency Carcass Disposal Plan
- LMSA Design & Construction

DEFINITION OF MODIFICATION

Proposal: Add definition of “modification” to clarify when a permit amendment is needed

Comments: Definition is vague and amendments cause delays

Final Rule: Added definitions clarifying “major” and “minor” permit modifications specific to feedlots

NAME OF PERMIT: NPDES V. NPDES/SDS

Proposal: Change name of “NPDES” permit to “NPDES/SDS”

Comments: Calling permit NPDES/SDS permit would be backdoor method of adding federal requirements into SDS permit

Final Rule: Proposed amendment dropped – No change to rule

OWNER DEFINITION

Proposal: “Owner” definition amended to include people who are proposing to own a feedlot

Comments: Might cause future buyers, lenders, or heirs, to feel compelled to be a permit applicant

Final Rule: Proposed amendment dropped – No change to rule

EMERGENCY CARCASS DISPOSAL

Proposal: Permitted feedlot owners should plan for disposal of a large number of carcasses resulting from a catastrophic event such as a flood, tornado, or fire

Comments: Board of Animal Health has authority over carcass disposal, not MPCA

Final Rule: Proposed amendment approved

LIMITED RISK LMSAs

Proposal: Add Liquid Manure Storage Area (LMSA) definition but clarify that certain small and limited use LMSAs are exempt from certain requirements

Comments: Exemption not adequately defined; MPCA has too much discretion

Final Rule: Types of LMSAs to be exempted are specified

BEDROCK REMOVAL

Proposal: Bedrock removal can be allowed during LMSA construction based on criteria in the rule

Comments: Bedrock should not be removed; MPCA has too much discretion

Final Rule: Proposed amendment approved

PROHIBITED DISCHARGES

Proposal: Clarify rule prohibiting discharges to groundwater by adding “and other direct conduits to groundwater” to list of prohibited discharge areas

Comments: “Conduit” is unclear and gives MPCA too much discretion

Final Rule: “Conduit” was replaced with “natural or constructed channels that convey fluids”

HOUSEKEEPING CHANGES

- Deleted obsolete language governing permit applications, open lot agreements, and unapproved LMSAs
- Corrected cross-references to state and federal rules
- Updated documents “incorporated by reference”
- Fixed punctuation, grammar, alphabetical order errors

STAFF RECOMMENDATION

The MPCA staff recommends that the Board adopt the suggested staff resolution authorizing the Commissioner, or his authorized designee, to sign the Findings and Order Adopting Rules.

QUESTIONS?

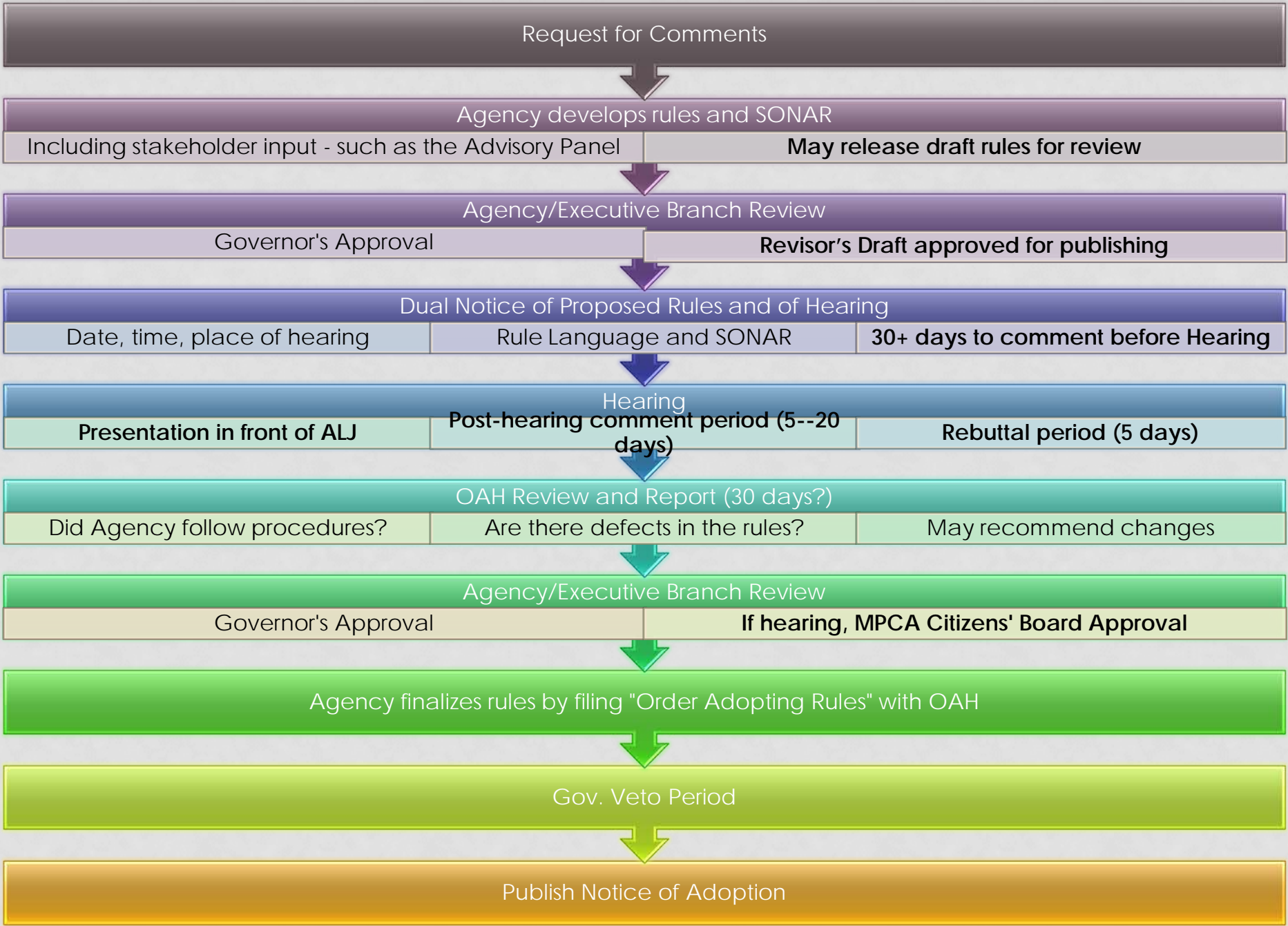
ANIMAL UNITS & CAFOs

How Many Animals Equal...

Animal Type	Large CAFO Threshold	1,000 Animal Units
Dairy Cows	700 cows	714 cows
Beef Steers	1,000 cattle	1,000 cattle
Finishing hogs	2,500 hogs	3,000 hogs
Turkeys	55,000 turkeys	55,556 turkeys
Broiler Chickens	125,000 chickens	200,000 chickens

CWA JURISDICTION ISSUE

- CWA refers to “navigable waters”
- In rule, EPA defined CWA jurisdiction as “waters of the United States”
- “Waters of the U.S.” included waters used in interstate commerce, not just “navigable waters”
- U.S. Supreme Court struck rule, but established no clear “test” (either permanent/continuous surface connection” or “significant nexus”)
- March 25, 2014: EPA and U.S. Army Corp released proposed rule to clarify CWA jurisdiction for 90 days of comments



Request for Comments

Agency develops rules and SONAR

Including stakeholder input - such as the Advisory Panel

May release draft rules for review

Agency/Executive Branch Review

Governor's Approval

Revisor's Draft approved for publishing

Dual Notice of Proposed Rules and of Hearing

Date, time, place of hearing

Rule Language and SONAR

30+ days to comment before Hearing

Hearing

Presentation in front of ALJ

Post-hearing comment period (5--20 days)

Rebuttal period (5 days)

OAH Review and Report (30 days?)

Did Agency follow procedures?

Are there defects in the rules?

May recommend changes

Agency/Executive Branch Review

Governor's Approval

If hearing, MPCA Citizens' Board Approval

Agency finalizes rules by filing "Order Adopting Rules" with OAH

Gov. Veto Period

Publish Notice of Adoption