



Overview of CAFO Proposed Rule

October 2006

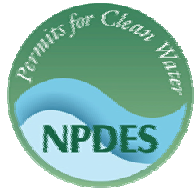
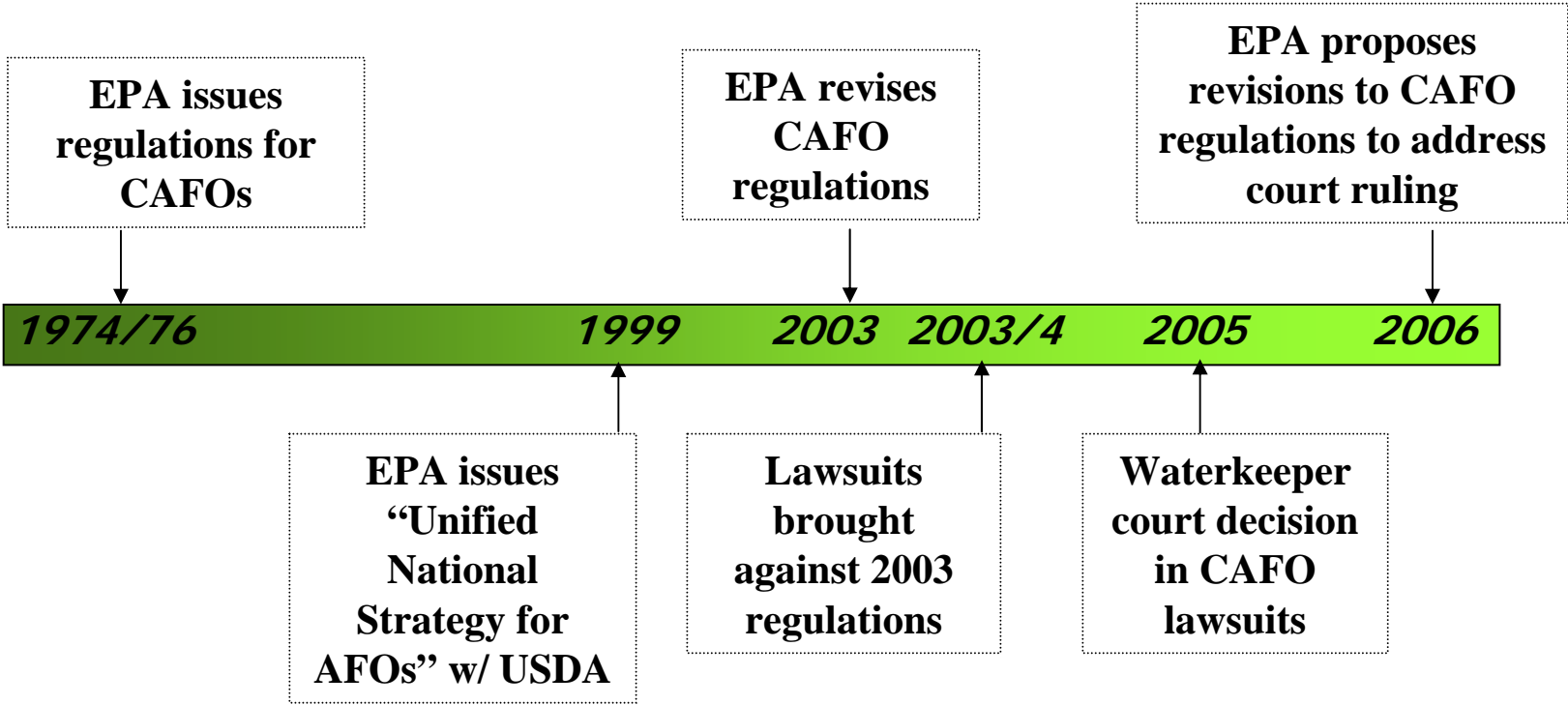




Presentation Overview

- CAFO regulatory history
- *Waterkeeper* court case
- EPA proposal in response to court case
- Overview of public comments
- Schedule

Regulatory History for CAFOs





Court Decision *Waterkeeper Case*

Upheld by the Court

- Production area
 - “No Discharge” requirement
- Land application
 - Nutrient management plan requirements
 - Agricultural stormwater definition: regulation of runoff



***Waterkeeper* decision requiring EPA action**

The Court vacated

- All CAFOs have a “duty to apply” for permits or demonstrate no potential to discharge
- Nutrient Management Plans
 - With no review by federal or state authorities or the public
 - Not a part of the permit

The Court remanded for further explanation

- Control technology for pathogens
- Applicability of water quality standards
- Zero discharge standards for new veal, pork & poultry CAFOs



EPA Proposal--Duty to Apply

What CAFOs must apply?

- Only CAFOs that *discharge or propose to discharge*
- No unpermitted discharges are allowed from the production area.

What CAFOs should apply?

- Near waters of the U.S. with certain land classification.
- Production area not designed and operated for zero discharge.
- Land application with inadequate NMP.
- CAFO had a discharge in the past and has not corrected the factors that caused the discharge to occur.



EPA Proposal--Duty to Apply agricultural stormwater

- Agricultural stormwater is a precipitation-related discharge from a land application area where an operator land applies in accordance with NMP.
- Permit is not needed if the only discharge is due to agricultural stormwater.
- NMP and documentation are needed to support a CAFO's claim.

EPA Proposal NMP Requirements

- Public review and comment
 - Submit NMP when apply for permit.
- Incorporation of NMP terms into permit.
- Modification of an NMP
 - Minor changes, no need for review
 - “Substantial” changes need public review
 - Increase in number of animals
 - Changes in land application areas
 - Increase in runoff or nutrient application rate
 - Significant change in nutrient balance
 - Changes in handling, storage, treatment, or land application



NMP template

- EPA is exploring the feasibility of using an NMP template
- Possible uses include
 - Template for CAFO to complete
 - Template for incorporation into the permit
 - Guide for operator development or permit writer review
- Draft template available on EPA website





Court Decision *Waterkeeper Case*

- Court remanded for further explanation
 - Control technology for pathogens
 - Applicability of water quality standards for production area
 - Zero discharge standard for new veal, pork and poultry CAFOs



Control Technology for Pathogens

- Court directed EPA:
 - To evaluate pathogens in context of “best conventional pollutant control technology” (BCT).
- EPA methodology
 - Is it “**cost reasonable**” for industry to control pollutants at a level more stringent level compared to other industries?
- EPA proposal
 - All candidate technologies failed the Cost Reasonableness Test.
 - Therefore, no new requirements for pathogens.



Water Quality Standards for Production Area

- Court found
 - Water quality standards are not applicable for precipitation-related land application discharges
- EPA proposal
 - Clarifies that water quality standards might apply to:
 - *Non-precipitation-related land application discharges*
 - OR
 - *Production area discharges*



New Source Standards for Swine, Veal, and Poultry

- The Court upheld
 - Zero discharge requirements for new sources.
- The Court remanded
 - Compliance alternative that a lagoon designed for the 100-year storm is equivalent to no discharge.
 - Voluntary “Superior Alternative Performance Standards” provision.
- EPA proposal
 - Provide a process for a CAFO to model their site-specific open containment system for no discharge.
 - Demonstrate the system is a no discharge system.



Important Dates for CAFOs

- On February 10, 2006, EPA revised key applicability dates for CAFOs to **July 31, 2007**
- Current regulations as follows:

	2003 Rule	Feb. 2006 Rule (Date-change rule only)
Newly defined CAFOs must apply for permits	February 13, 2006	July 31, 2007
All existing CAFOs must develop and implement NMPs	Dec 31, 2006	July 31, 2007

Note: Dates may differ for CAFOs already covered by permits.

- Proposed Rule: NMPs to be submitted by July 31, 2007, and implemented upon permit coverage.



Public Meetings

- 5 public outreach meetings in Summer 2006 – NC, IA, CO, TX, CA
- Webcast held August 8, 2006
- Principal concerns raised
 - Public access to confidential farm management info
 - Burden on states from NMP reviews
 - “Self-permitting” scheme compromising environmental protection
 - Lack of pathogen controls

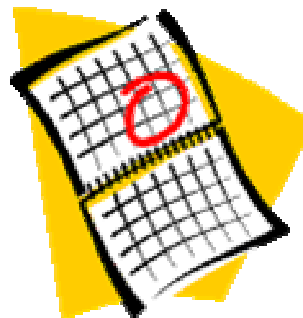


Public Comments

- Environmental groups:
 - EPA could have established “presumption of discharge”
 - Any large CAFO, any land application should require a permit
- Industry groups:
 - Concerns with duty to apply for “propose to discharge”
 - Need more clarity on what constitutes “discharge”
 - Anticipate difficulty meeting deadlines
 - Process for getting agricultural stormwater exemption
- States/other government
 - Inherent tension between need for permit modifications and need for NMP flexibility
 - Need more flexibility for states with existing processes
 - Disagreement on NMP “terms” for permit



Schedule for Rule Revision



STEP	TIMEFRAME
60-day public comment period	Ended 8/28/2006
EPA workgroup review	Fall 2006
OMB review	Spring 2007
Final rule published	Summer 2007