

Steck Comments on DNREC June 30, 2021, Hearing on CAFO Permits
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My comments focus primarily on three issues. The first is the improper inclusion of the draft NPDES CAFO permit DE 5000N/11 in the hearing. Secondly, errors and issues regarding the DRAFT NPDES CAFO permits and fact sheets. Thirdly, there are serious issues of transparency and accountability of CAFO operations and CAFO permits within the State of Delaware; more precisely, the lack of transparency and accountability regarding Delaware CAFOs and information and documents related to them. Finally, there is essentially no way to get information about and answers to questions regarding the impact of these operations on the environment because of problems with these three topics.

PUBLIC HEARING IMPROPERLY INCLUDED

NEW ISSUE NOT NOTICED FOR PUBLIC DISCUSSION

The June 30th public hearing and the notice for this hearing included a new topic not previously identified or put out in notice to the public for discussion: The RENEWAL OF DRAFT NPDES PERMIT FOR LARGE, MEDIUM & DESIGNATED POULTRY CAFOs--DE 5000N/11. This was not previously advertised or put out for public comment, unlike the DRAFT NPDES CAFO General Permit for Large, Medium, Designated Non-Poultry and Diversified CAFOs that was noticed on April 11, 2021 [Permit DE 0051250] and sought comments by May 11, 2021. In fact, a list of archived notices DNREC's Div. of Water including the April 11 notice of the DRAFT NPDES CAFO general permit [Permit DE 0051250] makes no mention of the proposed DRAFT NPDES CAFO PERMIT DE 5000N/11--see attached list of notices (<https://dnrec.alpha.delaware.gov/dnrec-public-notices/water-archive/>).

Therefore, the PROPOSED RENEWAL OF THE DRAFT NPDES CAFO PERMIT DE 5000N/11 was improperly included in the June 30th hearing. Further, the entire

discussion of this proposed renewal should be stricken from this hearing record, as it was premature, given that there was no public notice seeking comments on or a request for a hearing on the PROPOSED RENEWAL OF THE DRAFT NPDES CAFO PERMIT. Therefore, a new public notice for comments on and/or a request for a hearing on this PROPOSED RENEWAL OF THE DRAFT NPDES CAFO PERMIT DE5000N/11 should be issued and a new and separate hearing should be held on this permit if requested.

Issues With Proposed Renewal of Draft NPDES CAFO Permit DE 5000N/11

That said, there are issues regarding the DRAFT Permit. In particular, Exhibit 1 of the public hearing notice misidentifies the title of Permit DE 5000N/11. The public notice states in paragraph 3: The Department intends to renew the Draft NPDES General Permit for Large, Medium, & Designated Poultry Concentrated Animal Feeding Operations (CAFO) - Manure Generation Facilities Only (DE 5000N/11)... However, something different appears when Draft Fact Sheet under Exhibit 1 Permit DE 5000N/11 is selected; the document shows the title NPDES CAFO GENERAL PERMIT LARGE, MEDIUM, & DESIGNATED POULTRY OPERATIONS **WITHOUT LAND APPLICATION** [emphasis added].

This is very confusing and begs the question as to what the official title is. It also raises questions about variations between the two permit documents and compliance with the regulations.

CONFUSING AND INCOMPLETE INFORMATION IN EXHIBITS

There are other issues with the exhibit documents. For example some contain confusing if not contradictory information, as noted above. Moreover, some exhibits, like the facts sheets, lack basic guidance and information. In the case of the State Technical Standards, the document is almost 10 years old and does not include current information.

Fact Sheets Lack Basic Information and Other Details

The facts sheets for the two permits discussed provide no guidance for a farmer, animal owner, farm manager, or other person involved in raising animals or running the operation as to completing the Notice of Intent (NOI). While basic requests for information are straightforward, like the location of a facility, there is no guidance for determining whether a person needs to file an NOI. For example, while the form lists the types of animals to consider, there is essentially no guidance or instruction for determining the number of animals that would trigger completing an NOI. Yes, the NOI form says to refer to the AWMP or NMP, but shouldn't the person know before they start this process--especially with respect to an NOI-- whether they actually should be required to file this? Similarly, the fact sheets for CAFO permits don't even mention which species or size or number of animals that come under the permits. Common sense would say attach some basic information about species and quantity so a person knows whether to complete the NOI. If the starting point should be an AWMP or NMP, then it seems like stating that at the top of the NOI would be useful.

The State Technical Standards Are Not Current and the Document Implies No Final Standards Exist

It's essentially impossible for anyone to consider this to be a valid document, let alone spend time reading or reviewing it. The document provided is not even the actual standards, but a critique of the preliminary standards that were incomplete and outdated. That someone would attach this document to the State Technical Standards hyperlink is really a disservice to the public and should be an embarrassment to DNREC. The attached document is a 2012 EPA Region III cover letter and a draft report, both of which point out deficiencies with the standards that were submitted for review and consideration. The report goes on to say on page 3 of EPA's draft report on the standards: "Finding #1. EPA determined the Delaware technical standards to be incomplete or not addressed."

It is amazing that DNREC would even include this document, because it is essentially an admission that no actual standards exist. This document raises all kinds of questions as to how many iterations in the standards have been made over the years, what is the current status of the standards, and whether they comply with federal law! If there are actually approved standards, why are they not part of this docket; this raises very serious issues with respect to how serious DNREC takes hearings and the public's right to participate in reviewing documents. Moreover, what kind of quality controls and systems does DNREC use to ensure complete, accurate, and relevant documents are provided to the public?

Problems with CAFO Notice of Intent

There are four problems with the CAFO NOI form itself and does not explain how DNREC and/or DDA handle animal feeding operations that fail to provide Animal Waste Management Plans (AWMPs) or Nutrient Management Plans (NMPs).

- 1) It is unclear to which type of CAFO permit an NOI corresponds, given the state has three different CAFO permits--GP1, GP2, and GP3. The form should clarify if it applies to any permit type or which type if it does not apply to all.

- 2) The form does not state whether manure includes "litter." Also, while the form asks about the generation and storage of manure, it does identify whether manure includes litter. This should be clear on the NOI, given the NOI is the first documentation in the permitting process. Failing to clarify whether manure includes litter will likely result in underreporting of volume and disposition of total manure/litter. Relatedly, neither draft versions of the GP1 and GP3 permits define litter, although both make extensive reference to it, manure, and wastewater. Moreover, the definition of manure in the draft permits by inference indicates it includes litter, but to be clear the definition of manure should include the word "litter."

- 3) The NOI form does not fully ask about the disposition of manure/litter. It asks about “ACRES UNDER UNDER CONTROL FOR MANURE APPLICATION” and “Tons or gallons of Manure Exported Annually” but does not discuss where the manure/litter is exported, what happens to manure/litter not exported, and what is done with any remaining manure/litter. For example, is it sold to another farmer, user, or company for decomposition/fertilizer products and/or bioenergy production?
- 4) There is no place on the form to document information about the CAFO permit once it is issued. The form should clearly include the CAFO permit number and date of issuance or approval and expiration date. If the argument is that each CAFO does not get its own permit, then there should be some unique identifier assigned to indicate that the NOI and relevant documents belong to the submitting entity.

Regarding this last point, the lack of a permit number and date of issuance can give the false impression the permit process is complete. The form as written--whether by design or omission--can lead someone to believe no permit is required, which is not true. In fact, by having dedicated space on the NOI for a permit number--or some other unique identifier--and date of issuance/approval, the form will clearly indicate a permit is required and the lack of information is a clear signal the permit has either not been issued or the NOI is not complete. Either way, someone looking at an NOI missing a permit number and issuance/approval date should understand the NOI is incomplete and is a flag to ask about the permit number and date of issuance.

THE PUBLIC LACKS ACCESS TO INFORMATION
ABOUT AND AWARENESS OF CAFO PERMITS
AND RELATED INFORMATION AND DOCUMENTS

There is a serious problem with transparency and accountability regarding the existence of CAFOs and their operations, especially with respect to manure output and the

disposition of it. Under Delaware's and the federal Freedom of Information Acts (FOIA), this information should be readily available. The permits acknowledge this, although making CAFO information available for review is not the same as making it readily accessible online. Given the recent experience with the pandemic and limited physical access and availability because of remote working just drives home the point why electronic access is important.

It's practically impossible to find basic information about the number and type of CAFOs in the state of Delaware, the number of animals in CAFOs at a given point in time, the location of CAFOs such as in each county, etc. There is no table of information showing fundamental information. Why isn't there a website or some tables or spreadsheets? There's outdated information in the DNREC secretary's 2016 order on CAFOs but nothing more recent on DNREC's website or DDA's CAFO site. Why?

There's no excuse in this day and age not to have readily accessible information on both agencies' websites. This lack of access undermines confidence in the agencies' management of the overall permitting of these operations as well as raises concerns about why the information is not available. It comes across as either incompetence or a conscious effort to keep information out of the hands of researchers, the public, and other government officials. In this day and age it creates unnecessary suspicion. Conversely, the lack of ready access to information and documents creates unnecessary work for agency officials and staff who have to pull together information when asking questions; having data and documents in a publicly accessible website, database, or set of spreadsheets or tables would eliminate considerable questions and suspicions.

Here are some basic questions that should be readily researchable.

- 1) How many CAFOs exist in DE and by each county at the end of FY2021 and each of the last 5 to 10 years?

- 2) How many CAFOs exist by species statewide and by county for each of the past 10 years?
- 3) How many animals by species are in CAFOs statewide and by county for each of the past 10 years?
- 4) How many CAFOs have submitted the required AWMPs and/or NMPs for each of the past 10 years? What is the breakdown by county?
- 5) How many CAFOs have submitted NOIs but not received CAFO permits?
- 6) How many inspections of CAFOs have been done in each of the last 10 years?
How many violations were found in each of the last 10 years?

Of course there are other questions regarding the volume of manure produced, what's been done with the manure, etc? Again, the public has a right to this information so why isn't it readily available?