

February 28, 2005

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Air Docket
Animal Feeding Operations Consent Agreement and Final Order
U.S. Environmental Protection Agency
Mail Code: 6102T
1200 Pennsylvania Ave., NW
Washington, DC, 20460,
Attention Docket ID No. OAR-2004-0237
202-564-1261

Iowa State University provides the following comments regarding the Animal Feeding Operations Consent Agreement and Final Order (Docket ID No. OAR-2004-0237):

1. Confusion may result because the Consent Agreement comment period and the producer sign-up period began concurrently. Are producers who sign up before the comment period ends and before the final document is issued signing an agreement lacking final details? Or does this indicate that EPA does not plan to make changes to the document based on incoming comments? Also, the 90-day sign-up period is short in terms of producer education. Because the Consent Agreement is complex, it will take some time for land-grant extension specialists and others to adequately review the document and then develop and distribute educational materials. Because of these issues, EPA should extend the sign-up period beyond the current 90 days and ensure that the final document is available prior to closing the sign-up period.
2. The Consent Agreement indicates that producers who participate will receive “limited, conditional covenants not to sue and liability releases from EPA.” This description does not clearly define or explain the benefits for producers to participate in the agreement. The primary question that our faculty and field specialists have been hearing from producers is: “Why should I participate in the Consent Agreement?” The benefits from entering this agreement need to be more clearly defined.
3. The Consent Agreement indicates that “AFOs who choose to participate will agree to pay a civil penalty which is based on the size of the AFO.” It is unclear why AFOs should agree to pay a penalty before their emissions have been determined. After the study, AFOs that paid a penalty may find they are not subject to regulation. The word “penalty” has negative implications and may not be the appropriate term to use. For some producers, this issue has become the sole reason not to sign the agreement. “Civil penalty” should be replaced with “administrative fee” or other term.
4. The Consent Agreement requires that “some very large AFOs will be required to immediately report estimated releases of NH₃, solely for the purpose of the Air Compliance Agreement.” What is EPA’s definition of a “very large AFO”? Why are these facilities singled out to estimate and report emissions immediately? How will these facilities estimate their emissions given the “uncertainty regarding emissions from AFOs” as described in the Consent Agreement? This information needs to be more clearly defined.

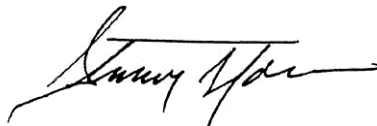
5. While the document indicates that EPA plans to proceed in a manner consistent with the recommendations of the National Academy of Sciences (NAS) report, we are concerned that a primary recommendation from the report — investigation of emissions mitigation — has not been included. We agree with the NAS report’s statement that “the implementation of technically and economically feasible management practices designed to decrease emissions should not be delayed.” The Consent Agreement should include a meaningful effort to better identify and develop emissions mitigation techniques. As stated in the document, there are very few economically viable techniques currently available. It is in the best interests of producers to use a portion of the producer-generated funds to assist in identifying viable mitigation techniques.
6. The proposed Consent Agreement monitoring study does not include a plan for an external peer review of the monitoring protocol. An external peer review is necessary to ensure the monitoring protocol is scientifically sound. We recommend that EPA establish an external panel to evaluate the protocol before initiating the monitoring study.
7. The Consent Agreement indicates that the emissions monitoring study will “collect data and aggregate it with appropriate existing emissions data.” Without an inventory of available “appropriate existing emissions data,” it is unclear whether the resulting data set will provide an adequate representative sample from each subclass (species, system type and geographic location) to achieve the stated result of “scientifically credible data to provide for the characterization of emissions from all major types of AFOs in all geographic areas where they are located.” Identification of appropriate existing data by species, system type and geographic location needs to be completed before final sampling sites are selected. Currently, the monitoring protocol has subclasses with only one site that will result in zero degrees of freedom for that subclass; hence, the results may not be useful in answering the stated objectives. In order to ensure that data from an adequate representative sample from each subclass are monitored, it is important that the available “appropriate existing emissions data” be inventoried so that the correct type of subclass sites can be more appropriately determined before the study begins.
8. In addition to the Science Advisor who oversees the technical monitoring details, the project should include an individual with the expertise to provide guidance on the project design from a statistical analysis standpoint and ensure that adequate inference space is designed into the monitoring study.

We appreciate the Environmental Protection Agency’s consideration of these comments.

Sincerely,



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