

Appendix



Example Letters to Owners/Operators After a Site Visit

Example Letter in Follow-up to an Inspection:
Facility *Not Designated* as a CAFOB-1

Example Letter in Follow-up to an Inspection:
Facility *Designated* as a CAFO..... B-3

Example Letter in Follow-up to an Inspection: Facility *Not Designated* as a CAFO

[NAME & ADDRESS]

Dear Mr./Ms. _____:

An inspection of your facility, located at [ADDRESS], was conducted on [DATE] by representatives of the [PERMITTING AUTHORITY]. The purpose of the inspection was to determine if conditions or practices on your animal feeding operation (AFO)¹ warrant designating your facility as a concentrated animal feeding operation (CAFO) and, consequently, requiring a National Pollutant Discharge Elimination System (NPDES) permit for operation.

During the inspection, no conditions or practices were observed to warrant designation of your facility as a CAFO at this time. However, the following observations were noted during the inspection.

[NOTE AREAS OF POTENTIAL CONCERN, IF ANY]

We request that you evaluate and address these areas of potential concern to ensure that they do not become problems. Technical information and assistance is available through [LOCAL NRCS OR EXTENSION OFFICE, STATE DEPARTMENT OF AGRICULTURE, OR US EPA'S AGRICULTURAL ASSISTANCE CENTER (888/663-2155)].

The [PERMITTING AUTHORITY] may inspect your facility again in the future. Please be advised that any illicit discharges² to surface water or to surface water through a direct hydrological connection via ground water are violations of the Clean Water Act and subject to enforcement action with penalties.

Sincerely,

¹ An animal feeding operation means a "lot or facility" where animals "have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility." 40 CFR 122.23(b)(1). [or alternate definition established by the Permitting Authority].

² In the absence of a NPDES permit, all discharges from the facility are prohibited.

Example Letter in Follow-up to an Inspection: Facility *Designated* as a CAFO

[NAME & ADDRESS]

Dear Mr./Ms. _____:

An inspection of your facility, located at [ADDRESS], was conducted on [DATE] by representatives of the [PERMITTING AUTHORITY]. The purpose of the inspection was to determine if conditions or practices on your animal feeding operation (AFO)¹ warrant designating your facility as a concentrated animal feeding operation (CAFO) and, consequently, requiring a National Pollutant Discharge Elimination System (NPDES) permit for operation.

During the inspection, the following conditions were observed:

[NOTE THE CONDITIONS THAT SUPPORT THE CAFO DESIGNATION.²]

Based on these conditions, the [PERMITTING AUTHORITY] has determined that your facility is or has proposed to be a contributor of pollutants to the waters of the United States. As such, the [PERMITTING AUTHORITY] designates your operation as a CAFO, with the requirement of applying for a NPDES permit and taking immediate steps to cease existing discharges and eliminate the potential for future discharges, except as authorized by a NPDES permit.

¹ An animal feeding operation is defined as a "lot or facility" where animals "have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility" **[or alternate definition established by the Permitting Authority]**.

² In making a designation, the Director "shall consider the following factors: the size of the AFO and amount of wastes reaching waters of the United States, the location of the AFO relative to waters of the United States, the means of conveyance of animal wastes and process waste waters into waters of the United States, the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and other relevant factors." 40 CFR 122.23(c)(ii)(2).

To apply for a permit for your facility, [PROVIDE SPECIFIC INSTRUCTION AS TO WHETHER THEY ARE REQUIRED TO APPLY FOR AN INDIVIDUAL PERMIT OR SUBMIT AN NOI FOR A GENERAL PERMIT. INCLUDE STEPS AS TO HOW TO GET PERMITTED]

This letter includes web sites, hotlines, and other resources for small businesses that you may use to obtain assistance to comply with these requirements.

The [PERMITTING AUTHORITY] may inspect your facility again in the near future. Please be advised that discharges such as that observed on [DATE] are in violation of the Clean Water Act and as such can subject you to enforcement action with penalties.

Sincerely,

Compliance Assistance Resources

If you operate a small business as defined by the Small Business Administration (defined at 13 CFR 121.201; in most cases, this means a business with 500 or fewer employees), you may find the following information helpful.

The U.S. Environmental Protection Agency (EPA) and the U.S. Small Business Administration (SBA) offer small businesses a wide variety of compliance assistance resources and tools designed to help small businesses comply with federal and state environmental laws. These resources can help businesses understand their obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

We encourage you to take advantage of these tools to improve your understanding of and compliance with environmental regulations and avoid the need for future enforcement actions. ***Please note that any decision to seek compliance assistance at this time does not relieve you of your obligation to respond to an EPA request, administrative or civil complaint in a timely manner, does not create any new rights or defenses, and will not affect EPA's decision to pursue this enforcement action.***

Dissemination of this information sheet does not constitute an admission or determination by EPA that your business organization is a small entity as defined by the Small Business Enforcement and Fairness Act (SBREFA) or related provisions nor does it create any new rights or defenses under law.

Web sites

EPA offers a great deal of compliance assistance information and materials for small businesses on the following Web sites:

www.epa.gov	EPA's Home Page
www.smallbiz-enviroweb.org	Small Business Environmental Home Page
www.smallbiz-enviroweb.org/contacts/sbosbeap.aspx	Small Business Environmental Assistance Program State Contacts
www.epa.gov/smallbusiness	Small Business Gateway
www.epa.gov/smallbusiness/help.htm	Small Business Assistance, Help, and Training Web Page
www.epa.gov/compliance/incentives/smallbusiness/	Small Business Compliance and Enforcement
www.epa.gov/compliance/assistance/index.html	Compliance Assistance Home Page
www.epa.gov/oecaagct/tsma.html	EPA Ag Center Small Farm/Small Business Web Page

State Agencies

Many state agencies have established compliance assistance programs that provide on-site as well as other types of assistance. Please contact your local state environmental agency for more information.

Agriculture Compliance Assistance Center

EPA has established national compliance assistance centers, in partnership with industry, academic institutions, and other federal and state agencies, that provide assistance services in sectors heavily populated with small businesses, including agriculture.

- ▶ Agriculture Compliance Assistance Center: www.epa.gov/agriculture
- ▶ National Agriculture Center: 1-888-663-2155 or www.epa.gov/agriculture/agctr.html

Hotlines

EPA sponsors more than 50 hotlines and clearinghouses that provide free and convenient avenues to obtain assistance with environmental requirements. EPA's Small Business Ombudsman Hotline can provide you with a list of all the hotlines and assist you with determining which hotline will best meet your needs. Key hotlines that may be of interest to you include:

- ▶ EPA's Small Business Ombudsman (800) 368-5888
- ▶ Superfund and EPCRA Call Center (800) 424-9346
- ▶ Safe Drinking Water Hotline(800) 426-4791

Small Business Compliance Policy

EPA's Small Business Compliance Policy is intended to promote environmental compliance among small businesses by providing incentives such as penalty waivers and reductions for participation in compliance assistance programs, and encouraging voluntary disclosure and prompt correction of violations. This policy can not be applied to an enforcement action that has already been initiated. Contact EPA's Compliance Assistance and Sector Programs Division (202-564-2310) for information on the Small Business Policy or review the policy online at <http://www.epa.gov/compliance/incentives/smallbusiness/>.

Small Business Administration National Ombudsman

The Small Business and Agriculture Regulatory Enforcement Ombudsman and ten Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually rate each agency's responsiveness to small businesses. If you believe that you fall within the Small Business Administration's definition of a small business (based on your SIC designation, number of employees or

annual receipts, defined at 13 CFR 121.201) and wish to comment on federal enforcement and compliance activities, contact the SBA's Office of the National Ombudsman at 1-888-734-3247 or ombudsman@sba.gov. ***Please note that participation in this program does not relieve you of your obligation to respond to an EPA request, administrative or civil complaint or other enforcement action in a timely manner nor create any new rights or defenses under law. In order to preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.***