



February 20, 2009

Ms. Alicia Kaiser
Designated Federal Officer
Office of the Administrator (1101A)
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

Dear Ms. Kaiser,

The Delaware Farm Bureau (DEFB) would like to take this opportunity to share with you and the Farm, Ranch, and Rural Communities Committee (FRRCC) our concerns regarding the February 27, 2009 Clean Water Act (CWA) Concentrated Animal Feeding Operation (CAFO) compliance regulation deadline for dry poultry operations set by United States Environmental Protection Agency (EPA). While we have expressed Delaware specific concerns to FRRCC in the past, the concerns outlined in this letter largely arose from recent public meetings held in Delaware to explain the new CAFO rules by EPA Region III which extend beyond our state's boundaries.

Our major concerns include:

- 1. Subjective definition of a point source discharge by EPA**
- 2. Business risks associated with a CAFO Permit**
- 3. Economic impacts on agriculture in the Delmarva region**

1. Subjective definition of a point source discharge by EPA

Since the Second Circuit Court ruled that permits are required when a farm discharges pollutants, the EPA, at least EPA Region III, has administratively interpreted a discharge as storm run-off from areas where many normal agricultural practices are implemented. As a result of this interpretation, EPA has effectively defined non-point discharges as point source discharges.

In recent EPA Region III presentations to poultry operators in Delaware, this new interpretation caused great confusion and fear. Confusion because EPA cannot, or will not, definitively tell a poultry operation if it is required to have a CAFO Permit. Fear because EPA only suggests that a poultry farmer conduct an "objective assessment" of its operations to determine if it is eligible. Failure to correctly self-identify your operation, however, can result in definitive enforcement action by EPA.

At the recent public meetings, EPA Region III attempted to define the parameters of a point source with comments like the following:

- "A teaspoon of manure sprinkled in the stones at the end of the buildings".
- "You know in your heart if you're discharging"

In light of the recent lawsuits brought against the EPA, the subjective definition of a point source discharge and ambiguous parameters provided by EPA are viewed by many as manipulative, strong-arm fear tactics to obtain new CAFO Permits in Delaware. All this is occurring within a state that adopted a model Nutrient Management Law (NML) in 1999. As a result of this law, Delaware developed and implemented a comprehensive environmental and nutrient management strategy with a program to monitor and regulate all crop and livestock operations. Our state has



worked with EPA for more than eight years for recognition of Delaware's NML for non-point source discharges.

2. Business risks associated with a CAFO Permit

Farmers are business people. Many farms are multi-million dollar operations that are accustomed to dealing in complex commodity markets. They understand and deal with reasonable levels of business risk every day. CAFO Permits have several new regulatory requirements that represent significant and unwarranted business risk to farm operations.

Business risks include:

6 months notice and public hearing requirement

- In business, time is risk. Considering the average poultry house costs in excess of \$300,000 to construct, this time frame has significant financial implications including: fluctuations in the cost of building materials, potential for increased cost of debt service, and reduced flexibility to capture advantageous market conditions.
- The notion that every farmer seeking a CAFO Permit has to commit physical and financial resources to a public hearing, openly provide business intelligence to its competitors, and additional resources if a case hearing is contested is unwarranted.

Requirement that all Nutrient Management Plans (NMPs) are subject to the Freedom of Information Act (FOIA).

- NMPs are legitimate business intellectual property and should be treated as such. With this requirement, NMPs are open and available for a farm operator's competition to review. In addition, it provides unrestricted access for any individual or organization to bring civil lawsuits against a farm operation. While we recognize the need for access to this information by state and federal agencies, we deem its access under FOIA as unwarranted.

3. Economic impacts on agriculture in the Delmarva region

The economic consequences of implementing current regulations are just now beginning to unfold. On February 20, 2009 MidAtlantic Farm Credit (MAFC) sent a letter to Delaware's Secretary of Agriculture outlining some of the impacts of the new CAFO regulations. MAFC finances almost 95% of all new poultry house construction in the region and has 1,311 accounts with poultry operations in its portfolio with a loan volume of \$494 million. MAFC's complete letter is attached for your review.

Economic impacts include:

- The requirement for capturing storm water runoff for a 25-year storm increases new construction site work costs as much as three times. A 100-year storm requirement may render agricultural sites non-viable for building (It should be noted that construction requirement information by EPA Region III during public meetings was incomplete and sometimes contradictory).
- The six months notice requirement mandated under the permit, plus additional time for contested case hearings, could require an entire re-work of loan packages due to fluctuations in building material costs. That additional time will likely cost the producer.
- Lenders may not be able to advance funds to borrowers with projects approved and either under construction or about to begin construction. If a permit is required and ultimately not issued, a lender's collateral value will have diminished creating the risk of enormous losses. If funds are advanced, many borrowers will also have borrowed



money for land, or perhaps a dwelling, predicated on the income stream from chickens. If construction is delayed, or, the permit is delayed or not granted at all, borrowers could have debt service well beyond what they can service without the poultry income. According to the Delmarva Poultry industry, Inc. (DPI), Delmarva's four poultry companies spent more than \$76 million on capital improvements last year. Growers spent \$45 million building new chicken houses and upgrading existing ones.

- A Price Waterhouse study done for DPI showed a multiplier of 7.2 jobs are created elsewhere for each job in the poultry industry. According to DPI, Delmarva poultry companies employed 14,000 people in 2008. This equates to more than 100,000 jobs created elsewhere.
- The poultry industry supports higher grain prices by virtue of the positive basis enjoyed in the region since grains are used as poultry feed. Without this positive basis and the cost to ship grain elsewhere, regional grain farmers will be severely impacted. In 2008, DPI states that Delmarva's poultry industry spent \$927 million on feed and used nearly 80 million bushels of corn and the equivalent of 27 million bushels of soybeans.

In conclusion, we are not recommending the elimination of CAFO Permits, the CWA, or the need for state and federal regulatory oversight. We believe these regulations can be implemented in a way that preserves and protects our environment, the poultry industry in Delmarva, and our nation's economy.

We are specifically requesting a stay on the February 27, 2009 deadline until EPA can provide a clear, non-subjective definition of non-point source discharges and point source discharges, recognize and account for the significant business risks associated with CAFO permits and FOIA, and evaluate the potentially devastating economic impacts that will extend far beyond the farming community in Delaware.

U.S. Senator Tom Carper and Congressman Mike Castle of Delaware have also recognized the significance of this deadline. They sent a joint letter to EPA Administrator Lisa Jackson requesting a stay of at least 90 days on February 4, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "LEJ", written over a faint, larger signature.

L. Edward Jestice, Jr.
President

LEJ: pt

Cc: Senator Carper
Senator Kaufman
Congressman Castle

enc: MidAtlantic Farm Credit letter

February 20, 2009

Mr. Edwin Kee
Secretary, Delaware Department of Agriculture
2320 S. Dupont Hwy
Camden, DE 19934

Dear Secretary Kee:

I am writing on behalf of MidAtlantic Farm Credit (MAFC) to express our concern over newly issued United States Environmental Protection Agency (EPA) Confined Animal Feeding Operation (CAFO) regulations. There are several things in the regulations that will have a dramatic effect on our borrowers, including the extremely onerous definition of a discharge, but I am writing specifically to address issues with new construction and the potential economic harm the regulations could cause our member borrowers.

As you know, MidAtlantic Farm Credit is part of the national Farm Credit System. We are one of the largest agricultural lenders in the mid-Atlantic region, with over 9,300 members and outstanding loan volume of over \$2.4 billion. Our loan portfolio includes 1,311 accounts that have poultry as a significant part of their farm income and constitute loan volume of \$494 million (20% of our loan portfolio.) We are one of the primary providers of credit to poultry producers in our region: According to a poultry housing representative, Farm Credit finances almost 95% of new poultry house construction.

Recent public meetings held on the Delmarva Peninsula by staff from EPA to explain elements of the new CAFO rules raised major economic concerns for our borrowers. Information presented on new construction requirements was incomplete and sometimes contradictory. Specifically, the requirement for capturing storm water runoff for new construction was stated to be for a 100-year storm and then later for a 25-year storm. Assuming the 25-year storm requirement is correct, estimates for the increase in the cost of site work necessary on a farm is three times as much. It is hard to imagine what a 100-year storm requirement would do to cost; it may render many agricultural sites non-viable for building. This seems like an excessive burden on producers for as little as "a teaspoon of manure sprinkled in the stones at the end of the buildings", as the risk was recently described at an EPA meeting.

In addition to the costs associated with site work there is an issue of timing. As you know, time is risk and particularly so in today's financial climate. We have seen dramatic fluctuations in costs of metal and wood over very short periods of time, let alone the six months notice requirement mandated under the permit plus additional time allowance for contested case hearings, etc. Changes in costs could potentially require an entire re-work

of the loan package and re-issuance of loan note guarantees by federal agencies if any such guarantee was required. That additional time will likely cost the producer.

Borrowers will be faced with having to decide whether they should proceed with loan applications concurrently with their CAFO permit request or if they should wait to apply for the loan after they know they will be granted permission to raise animals. If they do the latter they will again be subject to the risks of cost increases, etc. and it will be almost 18 months before they can place birds, and nearly two years before they will see any income. If they decide to move forward concurrently, producers could incur significant expense in appraisals and other loan costs, with no guarantee of approval.

Of immediate concern to Farm Credit are the borrowers that are now caught with projects approved and either under construction or about to begin construction. As the lender, we are faced with having to decide if we should advance funds to build improvements on a site that suddenly does not have, but needs by next week, a permit. If we advance those funds and the permit is not ultimately issued (and we may not know for 6 months or more if the approval will be granted) we would be looking at improvements that are suddenly worth very little and our collateral value diminished, creating the risk of enormous losses. Many of these borrowers will also have borrowed money for land, or perhaps a dwelling, predicated on the income stream from the chickens. If the construction is delayed, the permit process is delayed, or the permit is not granted at all, borrowers could have debt service well beyond what they can service without the poultry income.

Mr. Secretary, I am concerned about the specific issues above and also for the impact that the CAFO rules will have on our entire regional economy. Economically, the poultry industry is the underpinning of agriculture on the Delmarva Peninsula. A large percentage of gross farm income is derived from raising chickens. Additionally, the poultry industry supports higher grain prices by virtue of the positive basis that we enjoy in this region since our grains are used as poultry feed. Without this positive basis and having to incur the cost of shipping grain to be used or sold elsewhere, our grain farmers would be severely impacted. The poultry industry also has a great impact to employment in the region. A Price Waterhouse study done for Delmarva Poultry Industry, Inc. showed a multiplier of 7.2 jobs created elsewhere for each job in the poultry industry. This is a huge number, especially in today's economy. We simply must be able to execute new regulations in a way where we do not have to choose between a clean environment and the poultry industry; we **must** have both.

In order to have time to find solutions to some of the issues addressed in this letter, as well as many other issues identified by other interested parties, it seems appropriate to stay the implementation of these regulations for at least 90 days. During that time, I am hopeful that reasonable accommodations can be found. Anything that you can do to convince EPA to issue a stay would be most helpful to the poultry industry, to agricultural lenders, and to the entire region.

Thank you for your time and consideration of this matter.

Sincerely,

Kenneth M. Bounds

Kenneth M. Bounds
Government Affairs Officer