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PROPOSAL UNDER THE JOINT EPA/STATE AGREEMENT
TO PURSUE REGULATORY INNOVATION

ALTERNATIVE PERMITTING APPROACH FOR
CONCENTRATED ANIMAL FEEDING OPERATIONS

Michigan Department of Environmental Quality
October 31, 2002

A. Overview of Project

The Alternative Permitting Approach for Concentrated Animal Feeding Operations (CAFOs) Project (Project) will test an alternative approach to satisfy federal and state permitting requirements and assure environmental compliance at large animal feeding operations (AFOs) in Michigan. The Project will implement the concentrated AFO plan agreed to between the Michigan Department of Environmental Quality (MDEQ) and the United States Environmental Protection Agency (USEPA) in January 2002.

B. Purpose for the Project

The purpose of this Project is to demonstrate an effective approach to assure appropriate permit coverage for large AFOs with regulated discharges (CAFOs), and to provide an alternative, more effective approach to assure environmental stewardship for large AFOs that do not have regulated discharges. The Project will assure CAFOs apply for coverage under a discharge permit, while large AFOs with no regulated discharge have the option of applying for permit coverage or participating in the Michigan Agriculture Environmental Assurance Program (MAEAP), under which they would implement Comprehensive Nutrient Management Plans (CNMPs).

This Project, along with a strong MAEAP assures compliance with federal and state requirements, while also promoting environmental stewardship in the livestock industry. This approach will foster cooperation and collaboration by setting clear requirements and also providing information and assistance, as well as incentives, to farmers to address environmental issues at their facilities. The benefits of this approach will go beyond the large producers, setting an industry-wide performance expectation for all the AFOs.

C. Project Narrative

A large AFO under this Project is an AFO with 1,000 or more animal units. A large AFO that since January 14, 2000, has had a "regulated" discharge, as defined by the MDEQ, is a CAFO and will be required to apply for coverage under the MDEQ's National Pollutant Discharge Elimination System (NPDES) General Permit for CAFOs (General Permit)(Appendix A). A large AFO that has not had a regulated discharge since January 14, 2000, will have the option of either participating in the MAEAP or applying for coverage under the General Permit for CAFOs. A CAFO or AFO has no authorization to discharge a regulated discharge. Such a discharge is prohibited now

and will continue to be prohibited under this Project, unless authorized by an NPDES permit.

The MAEAP is a proactive program designed to protect the environment through sound planning and stewardship practices, including the timely development and utilization of a CNMP. The MAEAP was developed by a coalition of agricultural, conservation, and environmental representatives as an effective approach to assure environmental protection and assist producers in developing farm-specific pollution prevention practices.

D. Project Components and Work Products

The following major components will be produced under this project:

1. Implementation Action Plan

The DEQ will take appropriate implementation action pursuant to Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended (Part 31) and rules promulgated there under to establish requirements for CAFOs to file applications for coverage under the General Permit and for large AFOs with no regulated discharge to file letters of intent to participate in the MAEAP.

Those operations with the highest potential of adversely impacting the environment will be addressed first. The following specific actions will be taken to implement this project:

- a. A CAFO that the MDEQ determines has had a regulated discharge to the surface water since January 14, 2000 will be required to file an application for coverage under the General Permit within 60 days of being notified by the MDEQ.
- b. A CAFO that has a regulated discharge since January 14, 2000, will be required to file an application for coverage under the General Permit within 120 days of the effective date of the implementation action establishing this requirement.
- c. A large AFO that has not had a regulated discharge since January 14, 2000, will be required to either:
 - i. File a letter of intent for participation in the MAEAP within 90 days of being notified by the MDEQ of that requirement, or by September 1, 2005, whichever is sooner, and certify to the MDEQ by September 1, 2006, or within one year of filing the letter of intent, whichever is sooner, that the animal feeding operation has been verified by the Michigan Department of Agriculture (MDA) as completing the Livestock System of the MAEAP; or
 - ii. File for coverage under the General Permit by within 90 days of being notified by the MDEQ or September 1, 2005, whichever is sooner.

Unless authorized by an NPDES permit, a regulated discharge from and AFO or a CAFO is prohibited under and is violation of Part 31. The MDEQ will take appropriate enforcement action to address a regulated discharge from an AFO or a CAFO.

2. The General Permit

The General Permit will establish permit coverage criteria, final effluent limitations, CNMP requirements, monitoring requirements, and other appropriate conditions.

3. Inspections of CAFOs

The MDEQ will conduct inspections of AFOs that are likely to have 1000 or more animal units to determine whether they have 1,000 or more animal units and, if so, whether there has been a regulated discharge since January 14, 2000. The inspections will be conducted within three years of the start of this Project and in accordance with the annual work plan under the MDEQ Clean Water Act NPDES delegation.

4. Notices to Apply for Coverage

Based on the results of inspections or other reliable information, the MDEQ will issue written notices to all CAFOs and large AFOs notifying these operations of the filing requirements described in 1.a. and 1.c., above.

Within 60 days of the issuance of the General Permit, the MDEQ will issue the appropriate written notice to each CAFO and large AFO for which the MDEQ has reliable information that such operation meets the criteria for coverage under this Project.

5. Certificates of Coverage under the General Permit

The MDEQ will issue Certificates of Coverage in response to timely and sufficient applications received.

6. Verification of Completion of Livestock System of the MAEAP

The MDA, with assistance from the MDEQ, as necessary, will work with large AFOs that file letters of intent to participate in the MAEAP to assure these AFOs meet the MAEAP conditions and are verified as completing the Livestock System of the MAEAP within the specified time frames.

7. Compliance Tracking

The MDEQ will track compliance with the requirements to file applications for coverage under the General Permit or letters of intent to participate in the MAEAP, as specified in the notices issued by the MDEQ.

8. Annual Report

The MDEQ will compile an annual report of the inspections, notices, applications, and certificates issued under the General Permit, and the notices, letters of intent, and verifications of completion of the Livestock System of the MAEAP for the previous year.

9. Ongoing Compliance Actions

- a. The MDEQ will take timely and appropriate action under its compliance and enforcement program to:
 - i. Address unauthorized discharges at AFOs and CAFOs;
 - ii. Address noncompliance with the requirements to apply for the General Permit or to participate in the MAEAP.
- b. For AFOs with less than 1000 animal units, a compliance component in each enforcement case will require the AFO to develop and implement a CNMP to prevent future discharges and to provide assurance of environmental compliance.

10. Final Report and Recommendations

A final report with recommendations will be produced at the end of this five-year project. The final report will include information relative to the environmental protection benefits of this Project.

E. Barriers to Overcome

This Project can be implemented under current state and federal law and regulations. To be successful, however, the participating facilities need assurance that the USEPA and the MDEQ:

- Recognize that the level of environmental protection being accomplished under this Project is equivalent to or exceeds what would otherwise be accomplished through a traditional permitting approach; and
- Agree, for the duration of this project, to exercise enforcement discretion and not compel participating CAFOs and large AFOs, in full compliance with the terms of this Project, to file application for NDPES permit coverage other than as set forth in this Project.

F. Stakeholder Process

This Project is utilizing the stakeholder workgroup that has been involved in the development of the General Permit (Appendix B) and which has reviewed this proposal and attachments. Also, the General Permit will be public noticed and subject to the formal public participation process under Part 31. Stakeholder participation will occur throughout the Project as necessary and appropriate.

Duration of the Project

The duration of the Project is five years, coinciding with the permit cycle of the General Permit. The Project will be implemented upon agreement by the USEPA. The USEPA and the MDEQ may enter into future agreements that enable this approach to be continued as a long-term program. Participation in and full compliance with the terms of this Project by qualified CAFOs and AFOs will satisfy federal requirements for CAFOs under the Clean Water Act for the duration of this project.

G. Project Contact for the MDEQ

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