



STATE OF IOWA

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DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

March 1, 2005

Air Docket
Environmental Protection Agency
Mailcode: 6102T
1200 Pennsylvania Ave. NW
Washington, DC 20460

Re: Comments for Docket ID No. OAR-2004-0237, Animal Feeding Operations Consent Agreement and Final Order

EPA Air Docket:

The Iowa Department of Natural Resources (IDNR) welcomes the opportunity to comment on the Jan 31, 2005 Federal Register announcement of the proposed Animal Feeding Operations Consent Agreement and Final Order. Iowa is the nation's leading producer of hogs with over 15 million, and also has an average of 39.1 million laying chickens, making it the nation's number one producer of eggs. As such, Iowa is uniquely impacted by this proposed settlement.

IDNR supports the development of a nationwide emissions monitoring study as outlined in the Air Compliance Agreement. The study will obtain emissions information that will be useful in quantifying emissions from animal feeding operations (AFOs) and in determining applicability to regulatory programs under the Clean Air Act (CAA). Due to the large number of AFOs within the state, Iowa requests that a significant number of emissions monitoring locations for the monitoring study be located in the State of Iowa.

However, IDNR does not believe it is an appropriate course of action to provide such a broad "conditional release and covenant not to sue" in this settlement. As acknowledged in the preamble to the federal register notice, EPA has the authority on a case-by-case basis to require AFOs to monitor their emissions and to come into compliance with applicable Federal laws. In addition, EPA has the ability to conduct its own research, and develop standards to regulate the emissions of air pollutants under the CAA. IDNR believes that EPA reasonably could have pursued settlement and establishment of the study without providing an "amnesty" for past violations.

IDNR also supports the EPA recognition that AFOs must determine and comply with their regulatory responsibilities under the CAA. Nevertheless, IDNR also has some serious concerns about the apparent lack of a long term strategy at the federal level to address quality of life issues associated with air emissions from AFOs that impact many rural citizens. The 2003 National Academy of Sciences study entitled "Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs" (NAS Study) indicated that odor and hydrogen sulfide emissions from AFOs are the most important problems for the rural neighbors of AFOs, and that ammonia emissions pose the greatest problems on the regional scale through formation of haze and eutrophication of ecosystems.

The preamble to this agreement published in the federal register suggests that federal authority is limited to the extent that for certain pollutants from AFOs that are regulated under the CAA and that are emitted in quantities that exceed regulatory thresholds, EPA can and will require AFOs to comply with all

applicable CAA requirements, including limiting those emissions where appropriate. However, while bringing AFOs into compliance with the current requirements of the CAA is desirable, this will not address any of the problems and recommendations presented in the NAS study. All of the authority needed to address the problems arising from air emissions from AFOs described in the NAS study are already contained in the CAA. For example:

- Under Section 108 and 109 of the CAA, EPA should use the emissions information gathered from the monitoring study to determine whether air pollutants commonly emitted from AFOs should be added to the criteria pollutants list. At a minimum, data obtained from the study should be included in the periodic reevaluation of the air pollutant criteria for particulate matter and ozone (VOCs).
- Under section 110 of the CAA, EPA has the authority to require revisions to State Implementation Plans to limit the regional contributions of ammonia emissions and interference with attainment or maintenance of the National Ambient Air Quality Standards. EPA should examine ammonia emissions reductions scenarios for AFOs in its current efforts to reduce the regional transport of fine particulate matter and its contributions to regional haze.
- Under section 111 of the CAA, EPA should examine the need for establishing standards of performance for new and some existing AFOs for hydrogen sulfide and odor emissions, utilizing odor measurements as a periodic monitoring requirement.
- Under section 112 of the CAA, EPA should examine the need for establishing AFOs as a source category and promulgate emission standards for hazardous air pollutants that may be emitted from AFOs, as area and/or major sources.

In not considering such actions as part of this agreement, EPA has thus far failed to capitalize on an opportunity to develop a commonly accepted set of regulatory benchmarks that are the basis of equitable and effective air pollution regulations. Failure to establish a set of regulatory benchmarks for AFOs at the federal level will allow for the continued development of a mix of state benchmarks that will perpetuate regulatory uncertainty for the AFO industry.

IDNR also strongly encourages EPA to consider requiring implementation of best management practices as a condition for participating in the agreement. The NAS study urged policy makers to require implementation of effective air pollution control measures as they became available, rather than delaying action until all of the complicated scientific questions surrounding air emissions from animal feeding operations are answered. Best management practices are a currently available and economically viable means to assure that AFO emissions do not cause or contribute to regional haze or to primary and secondary NAAQS violations (including rural citizen welfare or quality of life issues). Implementation of best management practices would help to offset the wide latitude of enforcement immunity being offered.

Regarding conditions of the agreement itself, the definition of “farm,” as used in the agreement, is ambiguous and may create some problems in implementing the agreement. For instance, whether a farm is a “large concentrated animal feeding operation” when the farm holds a mix of the defined animal population (but no single population exceeds the trigger level) is not addressed. In addition, a new and undefined term, “common ownership,” is used instead of the more commonly used regulatory term “common control.” When developing the AFO Air Rule referred to in the Federal Register Notice Preamble, the terms “facility” and “major stationary source” need to be clearly defined for purposes of applicability. The agreement as currently written blurs these distinctions and raises serious questions of whether the AFO industry understands the concepts of “common control” and “contiguous and adjacent”

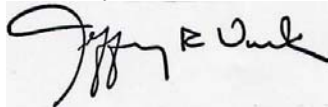
in regard to applicability issues. IDNR encourages EPA to use terminology consistent with current interpretation of CAA programs when developing the AFO Air Rule.

We also wish to convey our support for the comments that will be submitted by the State and Territorial Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) and the Central States Air Resource Agencies (CenSARA).

It will ultimately be the IDNR's responsibility to ensure that AFOs comply with the CAA. Therefore, it is requested that IDNR be included in meetings, conference calls, and written correspondence, as applicable, regarding any activities conducted within this state under the agreement. IDNR would appreciate the opportunity to lend its expertise and knowledge in this area during the period of the agreement.

If you have questions or need additional information, please contact Catharine Fitzsimmons at (515) 281-8034 or by email at catharine.fitzsimmons@dnr.state.ia.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey R. Vonk", is written over a light gray rectangular background.

Jeffrey R. Vonk
Director

c: Joshua Tapp, EPA Region VII
Chuck Layman, CenSARA