



Agencies propose more conservation, tighter livestock regulations

By Sara Wyant

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As part of a strategic planning process to accelerate cleanup of the Chesapeake Bay, USDA, EPA and other key federal agencies outlined plans on Thursday to expand regulations on a variety of sources, including livestock operations, and increase enforcement of water and air pollution in the area. The Chesapeake Bay Watershed stretches over 44 million acres and includes parts of Maryland, Virginia, West Virginia, Delaware, Pennsylvania, New York, and Washington, D.C.

The seven draft reports, which were required by Section 202 of President Obama's Executive Order on the Chesapeake, address a range of issues including water quality, public access, landscape conservation, climate change, scientific monitoring and the protection of living resources. They will be used to develop a more detailed bay restoration strategy, scheduled for release Nov. 9.

Agriculture is responsible for about half the pollution entering the bay, but USDA Secretary Tom Vilsack said farms and forest lands also are part of the solution, because they provide important open space. Conversion of agricultural and forest land to developed uses increases impervious surface. Once impervious surfaces cover more than 10% of a watershed, rivers, creeks, and estuaries begin to degrade biologically. He said he was concerned about lost agricultural and forest land, adding that one acre of parking lot produces 16 times more runoff than an acre of meadow.

Vilsack also emphasized that USDA was willing to invest \$638 million to incentivize private landowners to enhance their conservation efforts. The agency would provide an annual investment of \$90 million and additional \$188 million over five years for voluntary conservation programs under the 2008 Farm Bill.

Environmental Protection Agency Administrator Lisa Jackson said the goal was to use federal leadership and "federal muscle when necessary" to speed up the cleanup process. In 2008, total estimated nitrogen and phosphorus loads from the watershed to the Bay were 311 million pounds and 19 million pounds, respectively. To meet water quality goals for the Bay, nitrogen and phosphorus loads will have to be reduced by 44% and 27% respectively, despite expected population increases of 30% between 2000 and 2030.

One proposal would expand the definition of "Concentrated Animal Feeding Operations" or CAFO's to bring a larger number of livestock operations under the regulatory umbrella. Exactly how livestock operations could be impacted by the Bay cleanup effort is somewhat unclear, but the agencies outlined several potential steps, according to the drafts released yesterday:

"EPA would initiate a rulemaking to reduce nutrient and sediment discharges from CAFOs to the Chesapeake Bay. As part of this rulemaking, EPA would examine a number of key elements including:

- Increasing the Size of the Universe of CAFOs with NPDES Permits
- Designating more AFOs (animal feeding operations) as CAFOs. EPA would consider revising the provisions for designating AFOs as CAFOs, 40 CFR 122.23(c), to allow designation in more circumstances. Such a change would better facilitate imposing permit requirements on operations that are contributing to water quality impairments.
- Revising existing CAFO regulations so that more animal operations qualify as CAFOs. EPA would consider bringing a greater number of animal operations into the CAFO universe in the Chesapeake Bay watershed based on a record that certain types of facilities should now be considered to be CAFOs by definition. For example, EPA would consider lowering the threshold number of animals required for an AFO to meet the definition of CAFO (40 CFR 122.23(b)). EPA also would consider defining as a CAFO any AFO that: 1) discharges or proposes to discharge into an impaired water; 2) discharges into waters of the U.S. through a man-made device; or 3) discharges directly into waters of the U.S. that pass through the facility.
- EPA also would consider establishing a requirement that certain CAFOs in the Chesapeake Bay watershed must apply for NPDES permits based on a record that supports a presumption that they discharge.
- Issuing Stronger CAFO Permits that contain terms and conditions that further reduce the discharge of nutrients from CAFOs to the Bay.

- Requiring permitted CAFOs to implement “next generation” Nutrient Management Plans (NMPs). EPA would consider revising minimum NMP elements in the CAFO rule to further prescribe agricultural practices essential for load reductions based on sound science and adaptive management principles, such as use of soil test phosphorus method, restrictions on fall and winter application of manure, sediment management, use of cover crops, and enhanced sampling requirements. Under a new rule that increases the size of the CAFO universe as described above, a much larger portion of row crop acreage in the Bay watershed would be associated with CAFOs, and thus subject to implementation of “next generation” practices.

- Off-site transfer reporting and record-keeping. Because many CAFOs do not own or lease enough land to apply the manure nutrients generated at the operation, off-site transfer of the manure is a common practice. To better regulate handling of all manure generated by CAFOs in the Chesapeake Bay watershed and increase accountability, EPA would consider revising the current CAFO rule as it applies to the Chesapeake watershed to require permitted CAFOs to submit more information and keep additional records about how their animal waste will be applied.

EPA believes that a CAFO rulemaking containing these elements could achieve significant reductions in nitrogen, phosphorus, and sediment loadings. Such a rulemaking could impose moderate costs on operations that, for the first time, would be required to apply for and comply with NPDES permit requirements for CAFOs. There would also be increased costs for all CAFOs to implement additional nutrient management requirements.”

In addition to a rulemaking for CAFOs, EPA would consider other new actions. For example, EPA would consider working with states to achieve greater nutrient and sediment reductions from current CAFO rule requirements through new guidance and implementation efforts. One option would be to develop new guidance to address production area controls for runoff, including example water quality-based effluent limitations that can be established in a CAFO permit to meet water quality standards with respect to production area discharges. Another option is for EPA to conduct, as part of ongoing efforts to implement the CAFO rule in the Bay states, a rigorous review of each state’s technical standards for CAFOs and work with states to update the standards, as needed, to address water quality. To better facilitate permit objections discussed above in section 1 of this report, EPA would consider classifying CAFO permits as “major” NPDES permits so that all CAFO individual permits are routinely made available to the Agency.

To support either new regulatory initiatives or actions under existing regulatory authority, EPA would consider using CWA section 308 to collect additional information about CAFOs. EPA currently lacks comprehensive information on the number, location, and nature of the entire universe of medium and large CAFOs. Such information could help EPA, as appropriate, develop new regulations and help EPA and the states, under current authorities, direct appropriate compliance assistance efforts, better identify technical assistance needs, establish targeted enforcement strategies in areas of concern, and develop voluntary programs and stakeholder partnerships.

When a draft strategy and revised reports are released on November 9, the formal public comment period will begin. But until then, feedback can be submitted at:

<http://executiveorder.chesapeakebay.net/post/Tell-us-what-you-think.aspx>

To view the Executive Summary of USDA's report, go to

[http://executiveorder.chesapeakebay.net/file.axd?file=2009/9/202\(b\)+Targeting+Resources+Draft+Report+Executive+Summary.pdf](http://executiveorder.chesapeakebay.net/file.axd?file=2009/9/202(b)+Targeting+Resources+Draft+Report+Executive+Summary.pdf)

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To learn more about the President's Executive Order and the process for developing the Administration's recommendations for the Chesapeake Bay, go to

<http://executiveorder.chesapeakebay.net>