



Facts About...

MDE's Revised Draft General Permit and Implementing Regulations for Animal Feeding Operations

The Maryland Department of Environment released a revised draft general permit and implementing regulations that would for the first time require discharge permits for large poultry operations. The draft general permit for animal feeding operations will ensure that Maryland's largest poultry producers are taking the steps necessary to properly manage poultry litter and reduce nutrient pollution into the Chesapeake Bay. The implementing regulations include another first -- public review procedures for application and plan submittals will be required under the general permit for animal feeding operations.

As Maryland continues to accelerate Bay restoration efforts, everyone is being asked to do more in regard to the Bay and no one is being singled out. Maryland is making significant strides in storm water management, erosion control, critical areas, growth management, wastewater treatment plants, septic systems, air emissions, and agriculture to help Maryland meet our commitments under the Chesapeake Bay Agreement.

In December 2007, MDE released a Preliminary Draft General Permit for Animal Feeding Operations (AFOs) and opened up an informal comment period. During this period, MDE and the Maryland Department of Agriculture (MDA) held three large public and several smaller briefings to outline the requirements and seek public comment. Many thoughtful and constructive comments were submitted and as a result, changes were made that make the permit as manageable and economical as possible for poultry and livestock farmers while further safeguarding water quality. A revised draft General Permit for Animal Feeding Operations released in May 2008 reflected these comments. After receiving additional public comment, MDE has made further revisions to this permit. This document outlines the changes and permit that are now being formally proposed for issuance and summarizes how the proposed Maryland permit and regulations compare with the requirements of other Chesapeake Bay states.

Definitions

An Animal Feeding Operation (AFO) is a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of at least 45 days in any 12-month period, and the animal confinement area does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. AFOs congregate animals and production operations on a small land area. Feed is brought to the animals rather than the animals grazing or otherwise seeking feed in pastures or fields.

A Concentrated Animal Feeding Operation (CAFO) is any large or medium AFO that discharges or proposes to discharge to surface waters of the State. Currently Maryland has 13 CAFOs permitted and pending permit coverage under the previous federal requirements that were based solely on size categories. Under EPA's pending new rules, CAFOs must obtain permit coverage only if they actually discharge or propose to discharge in the future. As a result, Maryland's universe of permitted CAFOs may increase or decrease depending on the specific situation of each AFO.

A Maryland Animal Feeding Operation (MAFO) is any large animal feeding operation (i.e. poultry operations totaling 100,000 square feet or greater, and for other AFOs based on EPA's definition of large facility based on numbers of animals) that is not otherwise permitted as a CAFO. Since these facilities have a significant potential to discharge to either surface or groundwaters of the state, Maryland has proposed regulations to protect water quality.

Requirements

CAFO Requirements

Requirements applicable to Concentrated Animal Feeding Operations (CAFOs) are intended to fully comply with and implement the final pending EPA federal regulations for CAFOs, such as no discharges except for greater than a 25 year storm event; 14 day maximum for unprotected outdoor storage of dry poultry manure; 100 foot buffer or 35 foot vegetated buffer for field application of manure. Changes from the previous draft permit consist of additional annual reporting requirements to fully comply with EPA's federal rule and other clarifications of federal requirements, such as the requirement that CAFOs submit a Comprehensive Nutrient Management Plan (CNMP) at the same time as they submit a Notice of Intent (NOI) application.

MAFO Requirements

The previous draft permit created an approach that would result in regulation of more facilities under permits than what is required for AFOs under the federal CAFO rule. The current proposed approach continues to require a larger universe of permitted facilities than under the federal rule, and it creates a third category of facilities that must implement the same environmental controls as required for MAFOs. These requirements are being implemented under new regulations being proposed concurrently with the revised draft permit.

Size of Operation

The permit regulates large poultry operations of greater than or equal to 100,000 square feet of chicken house capacity to obtain permits, and the corresponding regulation requires poultry operations with 75,000 to 99,000 square feet of chicken house capacity to formally certify to MDE that they are meeting the same standards required for the permitted MAFO facilities, including either a Comprehensive Nutrient Management Plan or an updated nutrient management plan and a state conservation and water quality plan. The Maryland Department of Agriculture has estimated that there are approximately 800 poultry operations in Maryland. Of these, approximately 75-100 are large poultry operations and 100-125 are medium poultry operations. Thus, the proposed permit and regulations will cover approximately 200 poultry operations.

Documentation

The permit requires MAFOs to submit either a CNMP or a Soil Conservation and Water Quality Plan (SCWQP) and an updated Nutrient Management Plan (NMP) that are integrated to meet the requirements of the new permit and regulations. To obtain permit coverage initially, MAFOs must submit an NOI along with a copy of their current MDA NMP. Facilities must submit their CNMP or integrated SCWQP and NMP within 2 years of permit issuance. Both MAFOs and certifying facilities must make their plans available for review by MDE inspectors upon request.

The tentative determination simplified annual reporting requirements for MAFOs from the previous proposal to mirror the annual reporting form required under MDA's nutrient management plan.

Medium-sized poultry operations with 75,000 to 99,000 square feet of chicken house capacity must formally certify to MDE that they have a current Soil Conservation and Water Quality Plan (SCWQP) and an updated Nutrient Management Plan (NMP) that meets the permit and enabling regulation's requirements, and must make those plans available for review by MDE inspectors upon request.

Facility Access

The permit and enabling regulations authorize MDE to conduct unannounced inspections of both large AFOs and poultry operations with greater than 75,000 square feet of total house capacity. In addition, researchers from the University of Maryland College of Agriculture and Natural Resources and MDA will be granted access upon request for the purpose of conducting a scientific study of the impacts of manure management practices on surface and groundwater quality.

Vegetative Buffer

The permit requires either a 35-foot vegetative buffer or 100-foot setback from surface waters for field applications of manure in most cases. In fields with slopes of 2 percent or less (flat areas), the permit allows MAFO poultry operations a 50-foot setback from streams where land application of manure is not allowed and now includes a requirement for field ditches to maintain a 10 foot vegetated buffer for stormwater runoff from the land application area.

Outdoor Storage of Manure

Outdoor storage of manure in the field is limited to 30 days effective three years after permit issuance with a 90-day requirement in the interim. The Department may reopen the public process for the permit to update the storage requirements based on results of appropriate studies by the University of Maryland Department of Agriculture and Natural Resources.

Setback requirements for field storage at MAFOs require either a 35-foot vegetative buffer or 100 foot setback from surface waters, including field ditches.

Permit Fee

There is no fee for MAFOs. The CAFO fee is unchanged from the previous permit draft, which is \$120 for small operations, \$600 for medium operations, and \$1,200 for large operations.

New Implementing Regulations

Changes to the Code of Maryland of Maryland Regulations (COMAR) are required to implement the Permit. The implementing regulations:

- Add COMAR definitions for AFOs, MAFOs, and CAFOs.
- Incorporate by reference EPA's CAFO rule, including any future EPA amendments, but with two unique provisions included in Maryland's implementation of EPA's approach. 1) Maryland's size category designates a large dry manure chicken AFO as 100,000 square feet total house capacity or greater instead of EPA's definition of 125,000 or more chickens and 2) Maryland's regulation does not designate an AFO as a CAFO unless there is a discharge or proposed discharge. The universe of facilities that will require a CAFO permit under Maryland's rule will regulate and permit as CAFOs at least as many as EPA's anticipated final rule.
- Add new COMAR regulation for Animal Feeding Operations and MAFOs consistent with the draft permit approach and define Certification of Conformance requirements, including right of access for MDE to inspect and verify, and authority to reject the certification and require a permit.
- Update the general permit section for AFOs consistent with the new permit.
- Update fee requirements for CAFOs consistent with the new permit.
- Require a public participation process.

Public Participation

The proposed regulations provide public access to all submitted plans, opportunity to comment on all plans and NOIs, opportunity to request a public hearing for all CAFOs, and opportunity to request a contested case hearing on the content of the approved plans for both CAFOs and MAFOs. The Department will notify the public when information is received from a permit applicant on its web site and by maintaining a notification list.

AFO Regulations in Other Bay States

Because EPA has delayed issuance of final CAFO rules, each state in the Bay region has developed its own set of rules, regulations, and permits for animal feeding operations. All states' AFO permits are similar in that they include a combination of requirements governing handling of manure in the production area, storage of manure prior to field application, and field application according to a nutrient management plan. In order to fully protect water quality, all three components must be addressed. If time limits on field storage result in application of manure to fields that is not in conformance with a nutrient management plan or transfer of manure to another farm that is not subject to nutrient management requirements, water quality will not be protected.

Although direct comparison between states is difficult because of differences in approach, terminology and definitions, Maryland's proposed CAFO/MAFO permit is more protective than surrounding States' permits because it requires both a certified nutrient management plan and soil conservation and water quality plan for all large and medium-sized poultry operations. In addition, Maryland requires a certified nutrient management plan for all farms, whether they are AFOs or not. This means that no matter where manure is transported in Maryland, it must be applied according to a certified nutrient management plan. While Pennsylvania requires all land application of manure to follow the requirements of their manure management manual, neither Pennsylvania, Virginia, nor Delaware require certified nutrient management plans to be implemented on all farms.

Maryland's proposed permit limits uncovered manure storage of 14 days for CAFOs and 90 days for all large and medium-sized poultry operations initially and dropping down to 30 days after three years unless monitoring studies demonstrate that uncovered storage does not impact surface or groundwater quality. Pennsylvania allows only 14 days of field storage for large poultry operations but allows up to 120 days of uncovered storage for medium-sized and smaller operations. Virginia also limits uncovered storage to 14 days but does not require any limits on manure that is transferred to another farm. Delaware allows uncovered storage of poultry litter for up to 180 days.

Maryland's permit also has specific provisions to enable access to facilitate sampling to be used to support further research into nutrient transport from animal feeding operations to ground and surface waters. This access will allow Maryland to fully evaluate the effectiveness of current pollution control practices specified within the permit and make any changes necessary to improve water quality protection. None of the other states mentioned above has incorporated this adaptive management approach in its regulation of AFO's.

With this proposed regulation, Maryland will be leading the way to being one of the first states to implement public participation requirements in response to the court's decision and EPA's proposed regulation to require public review of the required nutrient management plans and NOIs. Although EPA's regulation to implement public participation is not final, and there is no indication when that will occur, Maryland will be implementing our own public participation process without relying on any final EPA rulemaking.

Maryland's CAFO permit requirements are consistent with EPA requirements. The EPA does not regulate operations that Maryland has designated as MAFOs. Maryland's program goes well beyond the federal requirements.