

Topic: Who Needs a Permit?

Specific EPA Questions:

- EPA seeks comment on the completeness and accuracy of a list of situations where a discharge may occur to further assist CAFOs in their decisions regarding whether or not to seek permit coverage (*Federal Register*, p. 37749)
- EPA also solicits comments on its proposal to replace the duty to apply provision promulgated in the 2003 CAFO rule with the narrower duty to apply provision described [on page 37749 of the *Federal Register*].

Our Concern:

The *Federal Register* (p. 37749) states that “EPA suggests that Large CAFOs falling into one or more of [the categories listed] should consider seeking permit coverage.”

Recommendation:

The list of criteria on page 37749 of the *Federal Register* appears to be complete. The only situation not included is “where an operation that handles all manure and/or litter as a dry product and does not control the land application of this material, but is subject to emergencies or natural disasters beyond the operator’s reasonable control.”

Because an operation with an actual discharge of pollutants to waters of the U.S. can be designated as a CAFO, thereby requiring coverage under an NPDES permit, the rule should state that any AFO that does not meet the definition of a CAFO, cannot apply for NPDES coverage. This makes a solid distinction between regulated operations and unregulated operations. It is our understanding that EPA did not intend to regulate the smaller operations that did not pose a significant risk to waters of the US. By disallowing AFO’s to apply for permit coverage, they should have the same protection or “shield” as an operation in the event of an accident or natural disaster that does have an NPDES permit as both are complying with the rule, and consequently the CWA.