

Paul Sherman
Animal Feeding Operations Unit Supervisor

NC Division of Water Quality

North Carolina Turkey Industry Days
and Poultry Supervisors' Short Course

Poultry Regulatory Update

September 28, 2005

NPDES Poultry Permitting Where are we now?

Federal NPDES Rules

- EPA rules effective April 2003
- Required NPDES permits for:
 - >125,000 non-laying chickens
 - >82,000 laying chickens
- Must apply for permit by April 2006
- Must have NMP w/ Phosphorus by December 2006

What has been done?

- Draft General NPDES permit for dry litter poultry developed Summer '04
- Voluntary registration process Winter '04
- Public hearings for the General NPDES permit originally scheduled for Spring '05
- 2nd Circuit Court decision changed things...

Federal Court Rulings

- After the EPA rules were made effective in 2003, industry and environmental groups filed suit
- Feb. 28, 2005 the U.S. Court of Appeals for the 2nd Circuit ruled in Waterkeeper Alliance Inc., et al v. EPA

- Part of that decision vacated the “Duty to Apply” section of the EPA rule

What does that mean?

- The “Duty to Apply” section of the rule set the threshold levels for needed an NPDES permit
- According to the Court, only facilities that discharge to waters are required to be covered by an NPDES permit
- The possibility is there will be very few if any dry litter facilities that will need an NPDES permit
- Only facilities that have a discharge from the production area or land application area must have an NPDES permit

Where to we go from here?

- No appeal was filed for the 2nd Circuit Court decision, therefore the decision is binding
- The NPDES Dry Litter Poultry permitting process has been put on hold
- EPA is revising the CAFO rules to incorporate the 2nd Circuit Court decision
- EPA should have draft rules out to public notice by 1st Quarter ‘06

Poultry Permitting Summary

- NPDES dry litter poultry permitting process is on hold
- Based on the court decision, only facilities with a discharge to waters will be required to have an NPDES permit
- Everyone else will remain deemed permitted under the same state “1217” requirements that have been in place
- The Director of DWQ does have the authority to require any facility that poses a threat to Waters of the State to apply for permit coverage

State Rule Changes & Manure Brokers What’s new?

State Rule Changes

- The State Non-Discharge Rules (15A NCAC 02H.0200) have not been substantially modified since the early ‘90s

- The rules needed to be reorganized into program specific areas
- Some changes were needed based on policy changes and program needs
- Rule making process still in draft stage, public notice October-December with hearings in late October

Subchapter 2T

- In order to accomplish the reorganization of the rules and to meet the rules of rulemaking;
 - The Non-Discharge rules will be moved into Subchapter 2T instead of being in 2H.0200
- Animal rules broken down into two main sections:
 - Animal Waste Management Systems
 - 02T.1200
 - Manure Broker Operations
 - .02T.1300
- Draft animal rules were developed through a stakeholder process in early 2005

What's new for animals

- Section is organized by:
 - Deemed Permitted Facilities (dry litter)
 - State Permitted Facilities
 - NPDES Permitted Facilities
- Very little new requirements in the Animal Waste Management Systems rules:
 - Litter stockpiles cannot be uncovered for more than 15 days
 - Any permitted structure (lagoon) shall remain permitted until closed to NRCS standard
- The biggest change is for Manure Brokers...

Manure Broker Operations

- Based on a legal opinion by the AG's office, by statute Manure Brokers should be permitted
- The draft 02T.1300 rules will deem permit the Manure Brokers with some requirements
- Requirements are established based on how much manure is land applied per year

What is a Manure Broker?

- “Manure Broker” means any person who accepts or purchases animal waste and land applies the animal waste on land not covered by the generator’s permit
- Basically, this rule covers land application of animal waste that is not part of the NMP for the farm

What are the Broker Requirements?

- Brokers that land apply more than 10 tons per year must:
 - apply at agronomic rates
 - stockpiles uncovered for no more than 15 days
 - 100 feet stockpile setback from stream
 - 25 feet land application setback from stream
 - must Register with the Division
 - must submit an annual report to the Division
 - must insure that land has had a soil test within 3 years

Broker Annual Reports

- More than 10 tons but less than 750 tons:
 - Name, address, and phone number of broker
 - Date, location, and amount of animal waste received
 - Date, location, amount, and acreage of land application
- More than 750 tons:
 - Name, address, and phone number of broker
 - Date, location, and amount of animal waste received
 - Date, location, application rate, acreage, waste analysis, and cover crop of land application
- Annual reports must be filed by March 1 for the preceding calendar year

Tentative Public Notice Schedule

- Draft Rules published in NC Register in early October
- Public comment period from October through December
- Public hearings tentatively scheduled for:
 - October 19th, Williamston
 - October 20th, Kenansville
 - October 24th, Asheville
 - October 26th, Raleigh
 - October 27th, Salisbury

Draft Rule Changes Summary

- Draft rules to public hearing this fall
- Public hearings give the opportunity for additional public involvement
- Earliest effective date Spring '06
- Animal Waste Management requirements relatively unchanged
- New Manure Broker requirements

Contact Information

The permit information can be found at:

<http://h2o.enr.state.nc.us/ndpu/animals.html>

Required records can be found at:

<http://h2o.enr.state.nc.us/ndceu/Animal.htm>

Copy of 2nd Circuit decision at:

<http://www.ca2.uscourts.gov/>

Phone: (919) 733-3221

Email: paul.sherman@ncmail.net