

the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS represents the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology for all pollutants (conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed by the Clean Water Act to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

3. Effluent Guidelines Planning Process—Section 304(m) Requirements

Section 304(m) of the Clean Water Act, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards and (2) promulgating new effluent guidelines. On May 28, 1998, EPA published a Notice of Proposed Effluent Guidelines Plan (63 FR 102) that established schedules for developing new and revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was “Feedlots” (swine, poultry, dairy and beef cattle).

a. Clean Water Act Section 304(m) consent decree. The Natural Resources Defense Council (NRDC) and Public Citizen, Inc. filed suit against the Agency, alleging violation of section 304(m) and other statutory authorities that require promulgation of effluent guidelines (*NRDC et al. v. Whitman*, Civ. No. 89–2980 (D.D.C.)). Under the terms of the consent decree in that case, as amended, EPA agreed, among other things, to propose effluent guidelines for swine, poultry, beef and dairy portions of the animal industry by December 15, 2000, and to take final action by December 15, 2002.

B. Existing Clean Water Act Requirements Applicable to CAFOs

EPA’s regulation of CAFOs dates to the 1970s. The existing NPDES CAFO regulations were issued on March 18, 1976 (41 FR 11458). The existing national effluent limitations guidelines and standards for feedlots were issued on February 14, 1974 (39 FR 5704). The discussion below provides an overview of the scope and requirements imposed under the existing NPDES CAFO regulations and feedlot effluent guidelines. It also explains the relationship of these two regulations, and it briefly summarizes other federal and State regulations that potentially affect AFOs.

1. Scope and Requirements of the 1976 NPDES Regulations for CAFOs

This section provides a simplified summary of the previous NPDES regulation to provide context for today’s action. The previous NPDES CAFO regulations promulgated in 1976, determined which AFOs were defined or could be designated as CAFOs under the Clean Water Act and therefore subject to NPDES permit regulations. Under those regulations, CAFOs were defined as AFOs that confined more than 1,000 animal units (AU). In addition, an AFO that confined 300 to 1,000 AU was defined as a CAFO if it discharged pollutants through a man-made device or if pollutants were discharged to waters of the United States that ran through the facility or otherwise came into contact with the confined animals. AFOs were not defined as CAFOs, however, if they discharged only during a 25-year, 24-hour storm. Under the 1976 NPDES CAFO regulations, the permitting authority could also designate any AFO a CAFO, including those with fewer than 300 AU, if it met the discharge criteria specified above and was determined to be a significant contributor of pollution.

2. Scope and Requirements of the 1974 Feedlot Effluent Guidelines

This section provides a simplified summary of the previous effluent guidelines to provide context for today’s action. EPA uses the effluent guidelines to establish national requirements limiting discharges to waters of the United States. EPA established the effluent guidelines for feedlots in 1974 based on the best available technology that was economically achievable for the industry. The guidelines were applicable to those facilities in specified sectors (or subcategories) with as many as or more than 1,000 AU that were to be issued an NPDES permit. The 1974 effluent guidelines did not allow discharges of pollutants from CAFOs into the Nation’s waters except when a chronic or catastrophic storm caused an overflow from a facility that had been designed, constructed, and operated to contain manure, process wastewater and runoff resulting from a 25-year, 24-hour storm. For permitted facilities where the ELGs did not apply (those with fewer than 1,000 AU), technology-based discharge limits were established using the permit writer’s best professional judgment.

C. USDA–EPA Unified National Strategy for Animal Feeding Operations

In 1998, EPA and USDA jointly developed a unified national strategy to minimize the water quality and public health impacts of AFOs. EPA and USDA jointly published a draft *Unified National Strategy for Animal Feeding Operations* on September 21, 1998. After sponsoring and participating in 11 public listening sessions and considering public comments on the draft strategy, a final *Unified National Strategy for Animal Feeding Operations* was published on March 9, 1999. A copy of the *Strategy* is available on the EPA and USDA web sites. The *Unified National Strategy for Animal Feeding Operations* established national goals and performance expectations for all AFOs. The general goal is for AFO owners and operators to take actions to minimize water pollution from confinement facilities and land where manure is applied. To accomplish this goal, the *Strategy* established a national performance expectation that all AFOs should develop and implement technically sound, economically feasible, and site-specific CNMPs to minimize impacts on water quality and public health.

The *Unified National Strategy for Animal Feeding Operations* identified seven strategic issues that should be addressed to better resolve concerns associated with AFOs. These are (1) fostering CNMP development and implementation; (2) accelerating voluntary, incentive-based programs; (3) implementing and improving the existing regulatory program; (4) coordinating research, technical innovation, compliance assistance, and technology transfer; (5) encouraging industry leadership; (6) increasing data coordination; and (7) establishing better performance measures and greater accountability. Today’s action addresses the third strategic issue—implementing and improving the existing regulatory program.

III. How Was This Final Rule Developed?

The preamble to the proposed rule presented a detailed discussion of the history of EPA actions addressing CAFOs, including issuance of the original NPDES CAFO regulations and effluent limitations guidelines (ELGs) for feedlots, development of the EPA/State Feedlot Workgroup Report (1993), outreach dialogues with representatives of the pork industry and poultry industry, EPA AFO strategy development, and collaboration with USDA on the development of the