

the proposed regulatory program. In the proposal EPA included a discussion documenting the relationship between a CNMP and a PNP. EPA also prepared, and made available for public review as a supporting document, a draft guidance document entitled *Managing Manure Nutrients at Concentrated Animal Feeding Operations* which provided information concerning the content of a PNP. The PNP was considered to be the subset of activities in a USDA defined CNMP that relate to compliance with the effluent discharge limitations and other requirements of the NPDES permit. EPA also proposed that it be developed, or reviewed and modified, by a certified specialist. The proposal would have required the PNP to be developed within 3 months of submitting either an NOI for coverage under an NPDES general permit or an application for an NPDES individual permit. CAFO operators would be required to notify the permitting authority when the PNP had been developed. EPA's position was that the content of a PNP was consistent with that of a CNMP and could be addressed in a single plan for a given operation.

*What were the key comments?* In general, commenters supported the concept of requiring the development and implementation of nutrient management plans by CAFOs. Although commenters generally supported the overall concept, many did not endorse the specific approach taken by EPA in the proposed rule. There was significant comment from stakeholders that the PNP would require the development of a separate plan in addition to a CNMP. Although EPA had intended the PNP to be a subset of information contained within a typical CNMP, not an independent or separate plan, a number of commenters misunderstood that point, and otherwise felt that the proposal would result in confusion in the regulated community.

The SBAR Panel noted the concerns of some small business representatives regarding the practical difficulties of ensuring that manure is always applied at agronomic rates. The Panel recommended that EPA continue to work with USDA to explore ways to limit permitting requirements to the minimum necessary to deal with such threats and to define what is "appropriate" land application consistent with the agricultural storm water exemption. The Panel agreed that if manure and wastewater are applied to land at agronomic rates and a facility is designed to contain the discharge from a 25-year, 24-hour storm, that facility would have minimal potential to discharge or adversely affect water

quality. However, it is also possible that an operation might land apply in excess of agronomic rates but still not discharge, depending on such factors as annual rainfall, local topography, and distance to the nearest stream. The Panel recommended that EPA consider such factors as it develops requirements related to land application.

The SBAR Panel also raised concerns related to the development and implementation of CNMPs, as well as specific requirements for applying nutrients at a phosphorous-based rather than a nitrogen-based rate in certain circumstances. Small business representatives expressed concerns about application of manure at phosphorus-based rates. The Panel noted the high cost of phosphorus-based application relative to nitrogen-based application and supported EPA's intent to require the use of phosphorus-based application rates only where necessary to protect water quality, if at all, keeping in mind its legal obligations under the Clean Water Act. If the soil is not phosphorus-limited, nitrogen-based application should be allowed. The Panel recommended that EPA consider leaving the determination of whether to require the use of phosphorus-based rates to BPJ, and continue to work with USDA in exploring such an option.

*Rationale.* In the March 1999 USDA/EPA *Unified National Strategy for Animal Feeding Operations* EPA and USDA endorsed the concept of CNMPs for all AFOs. The Strategy acknowledged that the vast majority of these plans would be developed under voluntary programs while a limited number would be prepared under the regulatory program. In today's final rule, CAFOs, which represent only a small proportion of all AFOs, are required to have a nutrient management plan, and the nutrient management plan represents a subset of activities within a CNMP that are necessary for CWA regulatory purposes. EPA believes that this approach is consistent with the concepts in the Strategy.

EPA explained in section IV.C.2.b above that the BMPs specified in today's regulation, including the requirement to develop and implement a nutrient management plan, represent the minimum elements of an effective BMP program and are necessary to control the discharges of pollutants to surface waters. As discussed there, non-numeric effluent limitations consisting of BMPs are particularly suited to the regulation of CAFOs. In particular, EPA believes that it is generally infeasible to establish a numeric effluent limitation for discharges of land-applied CAFO waste. The factors that make a numeric

limitation infeasible include, among other things, that storm water discharges can be highly intermittent, are usually characterized by very high flows occurring over relatively short time intervals, and carry a variety of pollutants whose nature and extent vary according to geography and local land use. Accordingly, the final regulations at section 122.42(e) specify the need for a nutrient management plan for all CAFOs and the general elements that the plan must address.

For Large CAFOs, EPA has specified the need for a nutrient management plan as a non-numeric effluent limitation in the form of a BMP requirement under the final ELGs. For Small and Medium CAFOs, and other operations that are not subject to the CAFO effluent guidelines, authority to require a nutrient management plan exists under Clean Water Act sections 402(a)(1) and (2) and 40 CFR 122.44(k). EPA believes that a nutrient management plan requirement for the Small and Medium CAFOs is necessary in order to appropriately control discharges of pollutants and otherwise carry out the purposes and intent of the CWA. For these operations, EPA found it was appropriate for the final rule to specify, on a national basis, the requirement for a nutrient management plan and the general elements that the plan must address. In turn, the final rule allows the permitting authority to include, on a best professional judgment basis in light of more localized factors, more specific nutrient management plan requirements as necessary to ensure appropriate agricultural utilization of nutrients at the operation.

EPA has addressed the SBAR panel concerns by defining the scope of a nutrient management plan with reference to those elements necessary to ensure that manure is managed effectively insofar as they are related to possible discharges to surface water. Further, today's final rule requires land application rates based on the site-specific technical standards established by the Director.

EPA agrees that the use of the term PNP created unintended confusion. While EPA remains a strong advocate of the development of CNMPs the Agency recognized the need to address this confusion. In response to comments, EPA is relying on the more generic term, "nutrient management plan" in today's rule. By way of clarification, the nutrient management plan is a separate and distinct term that applies to the subset of activities in a USDA-defined CNMP that are required by the CAFO effluent guidelines or NPDES permit regulations. These requirements are