UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JAN 29 2010

Honorable Shari T. Wilson, Secretary
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Dear Secretary Wilson:

In a letter dated January 15, 2009, the Maryland Department of the Environment (MDE) submitted final updated documentation regarding Maryland's Concentrated Animal Feeding Operations (CAFO) regulations for review by the U.S. Environmental Protection Agency (EPA) Region III. EPA has been working with MDE since then to develop a federally-approved program. EPA has reviewed the Maryland revised regulations and hereby provides its approval pursuant to 40 CFR §123.62. However, at this time, EPA is still working with MDE to address Maryland's technical standards to assure compliance with 40 CFR § 123.36.

Enclosed is a more detailed description of EPA's review. In addition, starting February 2010, EPA will be conducting a review of state technical standards to ensure that, among other things, nitrogen and phosphorus movement to surface waters is minimized, while achieving realistic production goals, as required by 40 CFR § 412.4(c)(2). EPA will be examining the field specific assessment methodology and the requirements regarding form, source, amount, timing and method of application of nutrients to determine whether the goal of minimizing transfer of pollutants to surface waters is achieved. Following our review, modifications of the state technical standards may be necessary if they are found to be inadequate. As Maryland develops its Watershed Implementation Plan in response to the Bay TMDL, EPA will work to ensure that Maryland will demonstrate that its technical standards, in conjunction with other state requirements, are sufficient to meet waste load allocations and load allocations for agricultural sources.

If you have any questions, please do not hesitate to contact me or have your staff contact Mrs. Linda Miller, EPA's Maryland Liaison, at 215-814-2068. Mr. Mark Smith of the Region's Water Protection Division will be conducting the technical standards review. If you have any technical questions regarding the program and technical standards review, Mr. Smith may be reached at 215-814-3105.

Sincerely,

Shawn M. Garvin
Regional Administrator

Enclosure

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Maryland Department of the Environment
Concentrated Animal Feeding Operations (CAFO) Program Review

Background

The Maryland Department of the Environment (MDE) submitted final updated documentation regarding Maryland's Concentrated Animal Feeding Operations (CAFO) regulations for review by the U.S. Environmental Protection Agency (EPA) Region III on January 15, 2009.

On December 13, 2008, MDE adopted amendments to the Code of Maryland Regulations (COMAR), Title 26 Department of the Environment, Subtitle 08 Water Pollution regulations. The submittal under consideration by EPA included three regulatory changes: (1) Amendments to Regulation .01 under COMAR 26.08.01 General; (2) New Regulation .09 under COMAR 26.08.03 Discharge Limitations; and (3) Amendments to Regulations .01, .09 and .09-1 under COMAR 26.08.04 Permits. The submission included an Attorney General's Certification that the changes to the regulations are in accordance with State Government Article 10-113, Annotated Code of Maryland. The amendments were proposed in order to bring Maryland's regulation into compliance with corresponding federal National Pollutant Discharge Elimination System (NPDES) regulations, and provide the regulatory framework for the Maryland CAFO general permit.

EPA promulgated revised regulations for CAFOs on February 12, 2003. The 2003 regulations expanded the number of operations covered by the CAFO regulations and included requirements to address the land application of manure from CAFOs. The rule became effective on April 14, 2003 and authorized NPDES states were required to modify their programs by February 2005 and, pursuant to 40 CFR § 123.36, to develop state technical standards that are consistent with the requirements of 40 CFR § 412.4(c).

Revised regulations that address the Second Circuit Court's 2005 decision in Waterkeeper Alliance et al v. EPA, 399 F.3d 486, were signed on October 31, 2008 and were published in the Federal Register on November 20, 2008. These regulations became effective on December 22, 2008. The 2008 final rule revises the 2003 regulations.

Program Approval

The following regulatory provisions were reviewed and approved by EPA in accordance with 40 CFR § 123.62 on January 29, 2010:

(1) Amendments to Regulation .01 under COMAR 26.08.01 General;
(2) New Regulation .09 under COMAR 26.08.03 Discharge Limitations; and
(3) Amendments to Regulations .01, .09 and .09-1 under COMAR 26.08.04 Permits

EPA is not addressing Maryland's technical standards to assure compliance with 40 CFR § 123.36 as part of the January 29, 2010 approval. Starting February 2010, EPA will be conducting a review of state technical standards to ensure that, among other things, nitrogen and phosphorus movement to surface waters is minimized, while achieving realistic production goals, as required by 40 CFR § 412.4(c)(2). EPA will be examining the field specific assessment methodology and the requirements regarding form, source, amount, timing and method of application of nutrients to determine whether the goal of minimizing transfer of pollutants to surface waters is achieved. Following our review, modifications of the state technical standards may be necessary if they are found to be inadequate.

Additionally, the 2003 CAFO Rule Preamble stated that, in some impaired watersheds, animal feeding operations (AFOS) and CAFOs may be impacted by Total Maximum Daily Loads (TMDLs) since improved management practices may be needed to restore water quality. In the case of CAFO land-application area discharges, any needed pollutant loading reduction would be achieved through the adjustment of state technical standards. In Maryland, since state technical standards apply to Maryland Animal Feeding Operations (MAFOs) in addition to CAFOs, which are subject to NPDES permitting, modification of the technical standards provides an avenue for addressing the TMDL. As Maryland develops its Watershed Implementation Plan in response to the Bay TMDL, EPA expects that Maryland will demonstrate that its technical standards, in conjunction with other state requirements, are sufficient to meet waste load allocations and load allocations for agricultural sources.