

Environmental Quality Board Study of Mandatory Threshold Levels for Environmental Review



ANIMAL FEEDLOTS

Introduction

At its January 2004 meeting, the Environmental Quality Board (EQB) asked its staff to examine the mandatory category threshold levels in the environmental review rules (Mn Rules parts 4410.4300 and 4410.4400). Board members wanted to know if the thresholds are still appropriately placed to balance environmental protection and public benefit with administrative burden.

In addition, the Governor's Livestock Advisory Task Force issued a report in June 2004 to fulfill its charge to "evaluate the status of Minnesota's animal agriculture industry and make recommendations to support its retention and growth in Minnesota." The report contained discussion and recommendations concerning five "competitiveness factors", one of which was "permitting and environmental review process."

One of the recommendations under this factor was: "Direct the Environmental Quality Board (EQB) to evaluate animal unit thresholds triggering environmental assessment worksheets (EAWs)." Therefore, at the Environmental Review Study team's October stakeholders' meeting, discussions were begun regarding threshold levels for the feedlot category.

Potential Changes in the Animal Feedlots Category

The following changes are being considered for the Animal Feedlot category:

Initiate rule-making for a mandatory category threshold change for animal units for both non-sensitive and sensitive areas, conditioned upon some level of local planning and land use control and/or mitigation. The idea under consideration is a two-tiered threshold, with a second level above the 1000 animal unit level that would apply when there is a higher level of local

planning and/or controls. By looking at the category through this scope, we will be able to:

- provide an incentive for good local planning and land use regulation;
- provide incentive for mitigation undertaken by the proposer; and
- create a more efficient process.

Background Information

Current Thresholds

For the Animal Feedlots Mandatory Category, the current threshold is as follows:

Mandatory Environmental Assessment Worksheet (4410.4300, subpart 29)

A. For the construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 animal units or more if the facility is not in an area listed in item B.

B. For the construction of an animal feedlot facility of more than 500 animal units or expansion of an existing animal feedlot facility by more than 500 animal units if the facility is located wholly or partially in any of the following sensitive locations: shoreland; a delineated flood plain, except that in the flood plain of the Red River of the North the sensitive area includes only land within 1,000 feet of the ordinary high water mark; a state or federally designated wild and scenic river district; the Minnesota River Project Riverbend area; the Mississippi headwaters area; or an area within a drinking water supply management area delineated under chapter 4720 where the aquifer is identified in the wellhead protection plan as vulnerable to contamination; or within 1,000 feet of a known sinkhole, cave, resurgent spring, disappearing spring, Karst window, blind valley, or dry valley.

Mandatory Environmental Impact Statement

There is no threshold triggering a mandatory Environmental Impact Statement for Animal Feedlots.

Data Collected

Data collection focused on the calendar years 2000 to 2003. During this time period, there were 29 EAWs completed under the Animal Feedlot category. Of these 29 feedlot projects, 20 were completed on swine, 7 on dairy, and 2 on poultry.

Discussion with County Feedlot Officers

A conference call was held with four county feedlot officers from the following counties: Nicollet, Pipestone, Cottonwood, Winona.

Based on their conversation, they would like to see higher thresholds and would be supportive of a tiered threshold idea. The reasons given for this include their opinion that the NPDES permit and local land use controls (where such controls exist) adequately address environmental and neighbor concerns that arise, and the EAW does not provide information that improves the process or outcomes.

Current Feedlot Permitting and Other Review Procedures

State Requirements

The Minnesota Pollution Control Agency (MPCA) is the state agency responsible for regulating the collection, transportation, storage, processing, and disposal of animal manure. These regulations are contained in Minn. R. Ch 7020 (Feedlot Rules) and were last updated in October of 2000. The feedlot rules apply to all aspects of livestock waste management including location, design, construction, operation and management of feedlots, and manure handling facilities.

Feedlots with 1000 or greater animal units

All feedlots that meet or exceed either the MPCA's 1000 animal unit threshold or EPA's Large Concentrated Animal Feeding Operation (CAFO) threshold must obtain a National Pollutant Discharge Elimination System

(NPDES) or State Disposal System (SDS) permit. Besides the basic permit application information, feedlots of this size must also submit:

- an air emissions plan;
- an emergency response plan for an unauthorized discharge;
- a manure management plan; and
- plans by a registered professional engineer if proposing a liquid manure storage area.

The NPDES or SDS permit contains requirements for the following topics:

- general requirements and notifications;
- air and water standards;
- location and expansion restrictions;
- transportation;
- livestock access to waters
- closure
- liquid manure and storage areas;
- unpermitted Liquid manure and storage areas;
- poultry barn floors;
- stockpiling;
- composting; and
- land application of manure and manure management plans.

The topics listed above are considered technical standards and apply to all persons involved in livestock operations or handling of manure, not just those required to apply for a permit.

Feedlots under 1000 animal units

The majority of feedlots in this size group do not need a permit to operate. However, they must register their feedlot and comply with the technical standards listed above. For construction, feedlots between 300 and 999 animal units must submit a construction short form permit. No construction permit is necessary for feedlots under 300 animal units.

If feedlots of this size have compliance problems or a pollution hazard exists on the property, they must obtain an interim permit. In rare cases, a feedlot in this size range may need an NPDES or SDS permit.

Public Notice Requirements

Before a feedlot operation can be issued an individual NPDES or SDS permit, it must go through a 30-day public comment period. The general NPDES/SDS permit has already gone through a public notice, therefore individual feedlots that receive a general permit do not have to go through the 30-day public notice procedure again prior to issuance.

For construction of new or expanding feedlots over 500 animal units, the feedlot proposer must notify each resident and each owner of real property within 5,000 feet of the project. This can be accomplished through personal contact, letter, or local paper publication.

Government Notification Requirements

All operating feedlots over 50 animal units (10 in shoreland areas) must register. Animal feedlots 1000 animal units or greater operating or expanding must apply for a permit, thereby notifying government authorities. For those under 1000 animal units, all must notify their local zoning department. Those constructing over 300 animal units must obtain a short-form permit, thereby notifying government authorities.

Local plans and regulation

In addition to applicable state and federal regulations, feedlot siting decisions are often subject to review by counties and in some cases by townships. The authority of Minnesota's local governments to site feedlots is part of their zoning authority, delegated to them by the state through its constitution and through planning and zoning enabling laws. Local ordinances typically address issues that are not dealt with through the 7020 permitting process, such as compatibility of a feedlot with adjacent land uses (including odor impacts), and impacts on roads and other infrastructure.

According to an annual survey by the Minnesota Association of County Planning and Zoning Administrators, 59 counties and 202 townships in 33 counties report administering zoning. Forty-five counties report feedlot components to their ordinances. Ordinances often include standards for separation distances ("setbacks"),

and some include requirements for obtaining conditional use permits, limits on overall feedlot size, or manure application setbacks from water features, residences, or roads.

Rationale

Since the adoption of the animal feedlot mandatory category thresholds in 1999, a major revision to the Minnesota feedlot rules (Minn. Rules Chapter 7020) and federal CAFO regulations were adopted, and many local feedlot regulations, comprehensive plans, and zoning ordinances have been adopted and updated.

These new developments may justify a two-tiered threshold with a second level above the 1000 animal unit level that would apply when there is a higher level of local planning and/or controls.

However, additional information needs to be gathered and analyzed to determine what new "second-level" threshold is appropriate, and under what circumstances the second-level threshold should be applied (i.e., what is the necessary level of local planning and/or controls).