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Ken Kirk

July 9, 2008

Benjamin Grumbles

**Assistant Administrator, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC4101M)
Washington, DC 20460**

Dear Mr. Grumbles:

The National Association of Clean Water Agencies (NACWA) is pleased to provide comments concerning the Environmental Protection Agency's (EPA) Proposed Supplemental Notice regarding revised National Pollution Discharge Elimination System (NPDES) permits for concentrated animal feeding operations (CAFOs). Although the official comment period for this Notice has ended, NACWA would like to express a number of concerns with the Supplemental Notice, due to the importance of this issue to NACWA's members.

NACWA's public clean water agencies recognize that nutrients are a major cause of impairment to our nation's water bodies, and many utilities have adopted aggressive approaches to confront this issue where it is deemed necessary according to the Clean Water Act's (CWA) water-quality based provisions. In the broad scheme, however, clean water utilities will have a limited impact in improving overall water quality because publicly owned treatment works (POTWs) are not the most significant contributors of nutrients to our nation's waters. This fact, though, has not been reflected in recent regulations. Instead, the major sources of nutrients, CAFOs and agricultural operations, remain largely overlooked. NACWA understands that the Agency cannot presently regulate non-point agricultural operations. NACWA feels, however, that this Notice provides the Agency with an opportunity to increase its leverage over a key agricultural source within the context of the Second Circuit decision in *Waterkeeper Alliance v. US EPA*. As a result, NACWA is concerned that the Notice does not go far enough in controlling pollutants from CAFOs.

Primarily, NACWA is concerned that the Agency's decision to create a self-certification system for CAFOs will not adequately control nutrient discharges. In the past, EPA has recognized that all CAFOs are either current dischargers or will be at some point in the future. With that given reality, allowing CAFOs to self-certify that they will not discharge encourages incomplete monitoring and enforcement of known discharges. As drafted, this Notice creates the option for CAFOs to either

under-report or avoid reporting discharges entirely without any legal ramifications. This approach is at odds with the entire permitting scheme under the CWA, because no other category of point source is allowed to self-certify. Instead, NACWA believes that the Agency should take this opportunity to improve water quality by making regulation of CAFO nutrient discharges more stringent rather than by increasing the flexibility of the permitting scheme.

NACWA also supports a robust scheme of nutrient management plan (NMP) implementation. The current Supplemental Notice only requires that permitting agencies incorporate the “terms” of NMPs into permits. NACWA believes that this system needs to be even stronger, because such a plan neglects critical aspects of nutrient management that are not considered “terms” as the Notice is drafted. Because nutrients are a critical source of impairment, the Agency needs to require permitting agencies to include entire NMPs, rather than selective parts of NMPs, into the permits they issue. In this way, the Agency will be able to ensure that all aspects of a CAFO’s nutrient plan are both monitored and enforced. In contrast, if sections of NMPs are omitted from permits then they fall out of the scope of permitting oversight.

Furthermore, NACWA members believe that NMPs need to be more robust and scientifically based. Specifically, an NMP needs to be created by looking at that NMP’s effects on its entire watershed rather than just its immediate waterbody. Water pollution affects an entire watershed, and a discharge into one waterbody can have a significant water quality impact on downstream waters within the watershed, and also on downstream dischargers like municipal POTWs. By factoring in all of the entities affected by an NMP, the Agency can ensure it limits the effects of reductions in water quality.

NACWA and its members recognize that POTWs will continue to play a key role in the control of nutrient pollution. NACWA believes, however, that all nutrient sources should be more equitably controlled and that broader changes are needed to reduce the significant non-point source contributions. NACWA appreciates the opportunity to provide these comments and hopes that EPA will review and consider them as the Agency moves towards a final policy. If you have any questions or would like to discuss this issue further, please contact our General Counsel, Keith Jones, at kjones@nacwa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk".

Ken Kirk
Executive Director

CC: Ephraim King, EPA
Nancy Stoner, NRDC