Topic: What are the costs of implementing the new regulation?

Our Concern:

As stated in the Federal Register (p. 37775), *"Overall, under Baseline A as previously described, the administrative burden under the proposed rule (i. e. the difference between Baseline A and the proposed costs of the proposal) is projected to decline to a total of approximately $64 million, which constitutes a reduction of roughly $15 million compared to the 2003 CAFO rule."*

EPA estimates in the proposed rule that the direct economic impact to producers will be approximately $43.4 MM. Based upon the number of CAFO's Missouri currently has under permit and the number of CAFOs indicated in Table 1 of the proposed rule, Missouri's portion of the economic burden will be approximately $1.5 MM. The EPA's estimates of costs to producers appear to be low. We believe that the economic impact of the rule on producers could be great and must be better defined by EPA in this rulemaking.

We believe that EPA has severely underestimated the costs associated with implementing the new regulation. Based upon the number of CAFO's Missouri currently has under permit and the number of CAFOs indicated in Table 1 of the proposed rule, Missouri's portion of the economic burden will be approximately $1.5 MM. NRCS estimates the cost of preparing and implementing a NMP to be $25/acre/year. This value was derived from experience and thus provides a good basis for calculating likely costs of writing NMP's. Given that the approximate number of spreading acres covered by permits in Missouri is 100,000 a more appropriate cost to Missouri producers would be $2.5 MM. Note that this is the only cost to create the NMP's, obviously implementation and record-keeping costs must be added to this estimate. Over the term of a permit (five years), the costs of complying with all the documentation requirements of this regulation can be significant.

We believe that the economic impact of the rule on producers could be great and must be better defined by EPA in this rulemaking.

If EPA requires all AFO operators to create NMP's in order to quality for the agricultural stormwater exemption, the costs realized by producers under this regulation are significantly higher than indicated. EPA should closely examine the impacts of NMP requirements for non-permitted facilities on regulatory agencies. This provision of the proposed regulation will place a significant additional workload on regulatory agencies by requiring extensive paperwork reviews in response to alleged violations of NMPs by unpermitted facilities.

If EPA insists on a "rates and dates" approach to NMP's rather than viewing the NMP as a strategic plan, the costs of implementing the new requirements will be significantly higher.

There is also an indirect cost that EPA appears not to have considered. The cost of permits will have to rise significantly in those states that fund their permitting programs through fees. While Missouri has many of the conditions of strategic nutrient planning in its permits, a "rates and dates" approach to NMP's will require significant additional review time and thus costs. Until EPA determines which approach to nutrient management planning that it intends to require the absolute costs of permitting can not be accurately determined.

In addition, the public notice requirement for the NMP will add to the cost of the review process regardless of form. Instead of putting the overall general permit on public notice once every five years, EPA now requires that each individual general permit be put out for public review.

In addition, EPA's requirement that new spreading acres be subject to the public notice provision creates a continuing and heavy burden on producers and the regulatory agencies. This one requirement will greatly increase costs to states that administer

NPDES programs. These additional costs will have to be borne by operators or the public and will multiply the costs of the new proposal significantly beyond those expected if this provision of the rule were to be deleted.

EPA has also failed to estimate the additional enforcement costs of the proposed regulation. If a complaint leads to an investigation of a possible discharge from a non-permitted facility, the department will have to review all the elements of the nutrient management plan and its implementation in order to determine whether an unpermitted discharge has occurred. This process is much more time intensive than previous approaches.

Recommendation:

EPA must re-evaluate the costs to implement the requirements of this rule. Due to the costs associated with this rule, EPA should consider additional federal funding for states to implement this rule.

EPA should evaluate the costs of the various options presented to accurately assess the implications of these decisions on producers and states. The use of an approach to nutrient management that differs significantly from that used by NRCS will cause an appreciable cost to producers. The decision that new land application areas constitute a significant permit modification and requires public notice will drive the costs to producers and states significantly higher than estimated by EPA. These two options should be rejected because of their cost implications and difficulty in implementation.