DAIRY BUSINESS ASSOCIATION | KEEPING THE COWS IN WISCONSIN™

April 4, 2008

Water Docket
Environmental Protection Agency (2822T)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: USEPA Proposed Rule: Revised NPDES Permit Regulations for CAFOs
Docket ID No. EPA-HQ-OW-2005-0037

Dear Sir or Madam:

On behalf of the Dairy Business Association of Wisconsin (DBA), this letter is in response to the Agency's solicitation for comments concerning the proposed revisions to NPDES Permit regulations for Confined Animal Feeding Operations (CAFOs) (73 FR 12321). DBA is a nonprofit trade association representing milk producers, processors, dairy professionals and associated vendors in Wisconsin. DBA's goal is to preserve Wisconsin as "America's Dairyland" and to stabilize and grow the dairy industry and infrastructure in the state. DBA's mission statement is simple: "Keeping the Cows in Wisconsin."

Wisconsin enjoys delegated authority under the Clean Water Act. DBA's membership includes dairy farmers of all sizes, many of whom are regulated under Wisconsin's Pollution Discharge Elimination System (WPDES) program. Although in several respects, Wisconsin's CAFO WPDES program is more stringent than the NPDES regulations for CAFOs, DBA nonetheless supports the proposed revisions which are the subject of this solicitation for comments. We respectfully request that you consider our comments.

DBA supports the proposed revisions to NPDES permit regulations for CAFOs. Specifically, DBA believes that giving owners and operators the option to self-certify "no discharge" will streamline the NPDES permitting process and allow states to better allocate and more effectively utilize limited resources. It is well documented that the Clean Water Act's "point source" program is generally not a good fit for addressing water quality issues with CAFOs. Most CAFOs with which we are familiar do not have any type of direct discharge to the waters of the United States. Such discharges, if they occur, most often are associated with land application activities and not with any "discernible conveyance." As such, we support the agency's proposal to allow operators to self-certify to "no discharge."

The proposed rules will also help ensure that facilities designed, constructed, and maintained to prevent discharges will not face additional enforcement risks for failing to obtain a permit in the unlikely event of an accidental discharge. DBA strongly agrees with EPA's position that determining whether a CAFO should seek a NPDES permit

should be based on an objective assessment of the facility's operations – not simply an animal "head count." Finally, DBA believes that five years is an appropriate duration for a "no discharge" self-certification. This duration coincides with the five-year limit on the length of a NPDES permit and seems to be a conservative timeframe within which a reassessment of the certification should occur.

As noted above, our Wisconsin Department of Natural Resources (DNR) operates and maintains the WPDES program under authority delegated by EPA. Currently, DNR has a backlog of WPDES permit and renewal applications waiting to be processed. This is due, in part, to the fact that the state program currently requires all CAFOs to obtain a WPDES permit because there is a presumption of discharge; this substantially increases the number of applications that DNR must process. Under the proposed rules, if CAFOs are given the opportunity to self-certify "no discharge," this could form the basis of a request to DNR to amend its program to be consistent with national practice and could alleviate at least some of DNR's existing permitting backlog, allowing DNR to focus its resources on facilities in need of WPDES regulation.

DBA believes that providing a set of objective criteria upon which a CAFO may self-certify "no discharge" provides a logical and efficient way for owners and operators to determine whether a NPDES permit is necessary. If the self-certification procedure is properly completed, all interested parties will have access to the same information upon which the decision to self-certify was based. This will increase transparency and allow the public to better understand the process by which a CAFO determines that a NPDES permit is unnecessary for their facility.

Finally, DBA believes five years is an appropriate duration for "no discharge" self-certification of no discharge for CAFOs. Five years is the maximum amount of time a NPDES permit may be issued under federal law, it makes good sense to have these two programs coordinated along the same timeline.

Thank you for your consideration of our comments.

Sincerely,

Laurie Fischer

Laurie J. Fischer, Executive Director
DAIRY BUSINESS ASSOCIATION