



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

FEB 26 2010

REPLY TO THE ATTENTION OF:

R-19J

Ms. Jessica M. Werber  
Attorney  
Environmental Integrity Project  
1920 L Street NW, Suite 800  
Washington, D.C. 20036

Dear Ms. Werber:

Thank you for your February 5, 2010, letter requesting the U.S. Environmental Protection Agency's review and subsequent denial of the transfer of authority of Ohio's National Pollutant Discharge Elimination System (NPDES) program for concentrated animal feeding operations (CAFOs) from the Ohio Environmental Protection Agency (Ohio EPA) to the Ohio Department of Agriculture (ODA). Your letter raises specific concerns with EPA's proposed approval of this transfer, including ODA's ability to implement the program in accordance with the law, potential conflicts between ODA's promotional and regulatory responsibilities, and ODA's enforcement record.

Concerns similar to those expressed in your letter were raised by the public in response to EPA's October 2008 notice of its proposed approval of the program transfer. EPA plans to prepare a responsiveness summary in response to the comments raised during the comment period, and to make that document available on our website at <http://www.epa.gov/region5/water/npdestek/odacafo.htm> when we reach a final decision on the transfer. EPA's final decision on Ohio's request will be based on a determination of whether ODA has the legal authority, as well as the ability and resources, to administer the NPDES program for CAFOs consistent with the Clean Water Act (CWA) and federal requirements for authorized state NPDES programs.

The following paragraphs summarize the background and status of Ohio's request.

In January 2007, EPA received Ohio's request for EPA to authorize ODA to run the NPDES program for CAFOs and stormwater associated with construction activity at animal feeding operations in Ohio. As you know, Ohio EPA runs the program now.

In October 2008, following an in-depth review of Ohio's request, EPA notified the public that we proposed to approve the ODA program. The proposed approval was contingent on the State making specified changes to its statutes and regulations. EPA's

proposed approval was based, in part, on a determination that with these specified changes, ODA will have adequate legal authority to administer the NPDES program consistent with the CWA and federal requirements, including the issuance and enforcement of NPDES permits, as well as the ability to prevent conflict of interest in the permitting process. The public notice appeared in the Federal Register and several Ohio newspapers. EPA conducted a public hearing and open house during the comment period, which ended in December 2008. EPA received over 6,000 comments regarding the proposed approval. EPA will either approve or disapprove the State's request after considering all comments it received.

ODA finalized revisions to its NPDES rules for CAFOs in January 2009. Ohio enacted revisions to its statutes regarding ODA's implementation of the NPDES program for CAFOs in December 2009. EPA is reviewing these changes.

In November 2008, EPA published revisions to the federal CAFO regulations in response to the Second Circuit Court of Appeals 2005 decision in *Waterkeeper Alliance et al. v. EPA*. The revisions became effective in December 2008. Under federal NPDES regulations, NPDES authorized states must make changes to their programs as needed to incorporate revisions to the NPDES requirements within one year, or two years if statutory revisions are necessary. Therefore, because any final decision on Ohio's request would occur after December 2009, an approvable ODA program will need to include changes to ODA's rules as necessary to address EPA's 2008 CAFO rule.

Again, thank you for your letter. EPA shares your interest in improving the quality of Ohio's waters. Ohio's continued regulation of CAFOs consistent with federal NPDES requirements will be critical in furthering that goal. If you have any further questions, please contact Matt Gluckman at (312) 886-6089.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bharat Mathur".

Bharat Mathur  
Acting Regional Administrator