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Evaluation of the EPA's Oversight of Ohio's National Pollutant Discharge Elimination System Permitting Program for Concentrated Animal Feeding Operations: U.S. EPA Office of Inspector General Report

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The United States Environmental Protection Agency ("EPA") Office of Inspector General ("OIG") published a July 7th report titled:

Evaluation of the EPA's Oversight of Ohio's National Pollutant Discharge Elimination System Permitting Program for Concentrated Animal Feeding Operations ("Report").

See Report No. 26-E-0040.

OIG states that it initiated an evaluation to determine whether the EPA's oversight verifies that Ohio's National Pollutant Discharge Elimination System ("NPDES") permitting program implements federal regulatory requirements related to nutrient management plans for concentrated animal feeding operations ("CAFOs").

The evaluation is stated to have been initiated based on a complaint that was submitted to the OIG Hotline.

The complainant is stated to have alleged that EPA was not appropriately overseeing Ohio's implementation of the NPDES permitting program for CAFOs. It was also alleged that EPA was not verifying that NPDES-permitted CAFOs applied manure and process wastewater in accordance with approved nutrient management plans. This evaluation focused on the first part of the complaint, the EPA's oversight of the NPDES permitting program for CAFOs.

Note that pursuant to 40 C.F.R. § 122.23(d)(1), a CAFO may only discharge pollutants into waters of the United States if it has an NPDES permit that authorizes it to do so. Such permit governs the day-to-day management and storage of animal waste and further specifies how the permitted CAFO disposes of manure and treats process wastewater. In addition, a permitted CAFO applies manure and processed wastewater to approved land application sites in accordance with an approved nutrient management plan.

Ohio is noted to be authorized to implement the state's Clean Water Act NPDES permitting program for CAFOs. Nevertheless, EPA maintains oversight responsibility for the program over the delegated state agency.

OIG states that as part of its evaluation, it reviewed six nutrient management plans to determine whether they included the nine minimum requirements under 40 C.F.R. § 122.42(e)(1)(i)-(ix). This is stated to have indicated that EPA's oversight offers reasonable assurance that Ohio's NPDES permitting program verifies that CAFO nutrient management plans comply with the referenced federal regulations.

The Report also notes that in terms of oversight responsibility, EPA Region 5:

- Conducts oversight activities of the Ohio EPA's NPDES program.
- EPA Region 5 and an Ohio EPA manager indicated that they maintain regular communication about the Ohio NPDES program.
- Each year, the region coordinates with the state to create grant work plans that identify all activities that the state will perform using the Section 106 grant funds.
- EPA Region 5 and the Ohio EPA conduct annual joint evaluations of the state's progress on the grant work plan.
- To ensure that the state's NPDES permitting program is consistent with the federal program, the region periodically asks the Ohio EPA to conduct a self-assessment of its NPDES permitting program's legal authorities.
- Ohio EPA conducted a self-assessment of its legal authorities in 2020 which concluded that the state's rules are consistent with the Clean Water Act and U.S. EPA's requirements .
- EPA conducted a permit quality review of the Ohio EPA NPDES permitting program in 2022 to assess the state's overall NPDES permitting program implementation.
- In 2023, the EPA conducted a review, using the state review framework, of the Ohio EPA's compliance and enforcement program under the Clean Water Act.
- EPA Region 5 conducts its own inspections of CAFOs in Ohio and coordinates with the Ohio EPA on enforcement actions and has taken its own enforcement actions against noncompliant CAFOs in Ohio.
- EPA Region 5 periodically reviews NPDES CAFO permits that the Ohio EPA has issued as well as the nutrient management plans associated with those permits.

A copy of the Report can be found [here](#).