

# SOUTHERN ENVIRONMENTAL LAW CENTER

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January 31, 2024

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Watershed Protection Branch  
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Suite 1456, East Tower  
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VIA Email: [EPDComments@dnr.ga.gov](mailto:EPDComments@dnr.ga.gov)

**RE: Comments on Draft Permit No. GAG920000 and Draft Permit No. GAG940000, General LAS Permits for AFOs**

Ms. Fenwick and Branch Chief Truszczynski:

Thank you for the opportunity to comment on the reissuance of draft Permit No. GAG920000, the general LAS permit for animal feeding operations (AFOs) with 301 to 1,000 animal units, and draft Permit No. GAG 940000, the general LAS permit for AFOs with more than 1,000 animal units.

We submit these comments on behalf of Southern Environmental Law Center, Chattahoochee Riverkeeper, Environment Georgia, Flint Riverkeeper, and Ogeechee Riverkeeper. Each of these environmental nonprofit organizations has a strong interest in protecting Georgia's rivers, lakes, streams, groundwater, and private properties from pollution discharged from AFOs.

## **I. Introduction**

The improper management of manure and process wastewater from AFOs has caused serious acute and chronic water quality problems throughout the United States. Moreover, there has been a continued trend toward larger operations, coupled with more intensive production methods, which has concentrated manure nutrients and other pollutants within smaller geographic areas. In 2003, U.S. EPA expressed concern that certain counties in Georgia and ten other states would experience excess manure nutrients from CAFOs.<sup>1</sup> EPA further noted that if "current trends in the livestock and poultry industry continue, more manure will be produced in areas without the physical capacity to agronomically use all the nutrients contained in that manure."<sup>2</sup>

In 2011, the U.S. EPA Office of Inspector General issued a report that found "significant deficiencies" in EPD's management and U.S. EPA Region 4's oversight of the CAFO program in

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<sup>1</sup> U.S. EPA, NPDES Permit Regulation and Effluent Limitation Guidelines and Standards for CAFOs, 68 Fed. Reg. 7176, 7181 (Feb. 12, 2003).

<sup>2</sup> *Id.*

Georgia.<sup>3</sup> The report further found that CAFOs were operating without NPDES permits or Nutrient Management Plans, inspection reports were missing required components, and the Georgia Department of Agriculture was not assessing compliance with permit conditions. Finally, the Inspector General’s report noted that “there is a significant risk that Georgia’s CAFO program is failing to protect water quality” particularly given that “the animals produce large quantities of waste—many times more waste than humans annually.”<sup>4</sup> While the draft permits at issue here are general LAS permits and not general NPDES permits, the same concerns apply.

Land application systems rarely operate as intended. Many land application systems in Georgia illegally pollute rivers, lakes, and groundwater because of their inability to treat wastewater adequately and to keep that wastewater on the sprayfields. These treatment systems are often improperly designed, improperly operated, and do not perform as anticipated.

We raise these comments and questions with the hope that the final LAS permits and EPD’s future actions with respect to these permits ensure that our water resources are protected from the significant risks to both human health and the environment posed by AFOs in this state.

## **II. Specific Comments on the Draft Permits**

### *A. Part I.C.1.*

We support this change in both permits.

### *B. Part I.C.2.*

We support this change in both permits.

### *C. Part I.C.7.*

We oppose this change in both permits. The proposed revisions reduce the review and approval period for adding new fields by half—from 180 days to 90 days. This is an ill-advised revision that leaves less time for EPD to review the Nutrient Management Plan (NMP) amendment, which could lead to a rushed and poor decision by already overburdened EPD staff. In considering other changes requiring an updated NMP, such as changes to the manure handling systems or an increase in the number of animals, EPD gives itself 180 days before the modifications are to occur to review and approve the updated NMP.

Adding a new sprayfield to an AFO raises serious concerns that these general permits are meant to address, such as protection of nearby properties and waterways. EPD should give itself ample time to review potentially complicated plans to ensure that land application in a new field is feasible. Reducing EPD’s allotted review period so drastically gives regulators less time to

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<sup>3</sup> U.S. EPA, Office of Inspector General, “Region 4 Should Strengthen Oversight of Georgia’s Concentrated Animal Feeding Operation Program,” Report No. 11-P-0274, at 3 (June 23, 2011), available at <https://www.epa.gov/sites/default/files/2015-10/documents/20110623-11-p-0274.pdf> (last visited Aug. 4, 2022).

<sup>4</sup> *Id.*

carefully consider and ensure that the additional sprayfield is capable of processing waste in a way that is protective of neighboring and nearby lands and waters. We urge EPD to maintain the current 180 review and approval period for adding new sprayfields to an NMP.

*D. Part I.C.9.*

We support this change requiring semi-annual reports in both permits.

*E. Part II.C.3.*

We support this change, which repeats the requirement in Part I.C.9.

*F. Part II.E.3.*

Draft LAS Permit No. GAG94000 contains an additional proposed change to Part II.E.3.<sup>5</sup> That change clarifies that AFOs commencing or expanding operations on or after September 15, 2003 shall have a groundwater monitoring system installed and monitored that is sufficient to monitor groundwater down and/or cross gradient from the waste storage lagoons. We generally support this change, but we also urge EPD to require a groundwater monitoring well that is hydrologically downgradient and/or cross-gradient from *each* waste storage lagoon, whenever an AFO has more than one lagoon.

We also urge EPD to require AFOs commencing or expanding operations on or after September 15, 2003 to install and monitor groundwater monitoring wells that are hydrologically downgradient and/or cross-gradient from each LAS field or series of fields. This is necessary to ensure that the NMP is operating as intended and that the appropriate agronomic rates are being used to ensure plant uptake of water and nutrients.

Finally on this revision, we urge EPD to make these same changes to draft LAS Permit No. GAG920000 for AFOs with less than 1,000 animal units. Groundwater contamination can have devastating impacts to anyone who relies on those aquifers for their drinking water. Likewise, cross-gradient contamination can lead to wide-ranging groundwater and even surface water pollution. While the amount of waste is higher at large AFOs, the potential for groundwater contamination exists anywhere waste is stored or applied to the land. Considering the potential for wide-ranging groundwater and surface water contamination, we believe smaller AFOs should have to monitor groundwater just like larger operations.

*G. Part VI and Part VII (Definitions)*

We support the change to the definition of “animal unit” to align with the list provided at Ga. Comp. R. & Regs. 391-3-6-.21. We further note that, given the recent discussions and concerns about developing a monkey breeding facility in south Georgia, EPD may want to

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<sup>5</sup> The summary pages states that the proposed change is in Part II.F.3, but that appears to be a clerical error.

consider whether such breeding facilities should be considered AFOs (it appears they would fall into that definition) and what the appropriate “animal unit” would be for monkeys or other animals bred for medical research. We recognize consideration of that comment may be better handled in a rulemaking.

We generally support the inclusion of a definition for “agricultural stormwater discharge,” though we have a couple of concerns about the definition provided. It appears the definition was taken from 40 C.F.R. § 122.23(e), concerning NPDES permitting requirements for concentrated animal feeding operations (CAFOs). The definition in the draft permits refers to CAFOs, but the general permits discuss only AFOs. While this may be a distinction without a difference for purposes of these LAS general permits, we nevertheless recommend changing “CAFO” to “AFO” in the final permits for consistency.

In addition, the definition in the draft permits refers to the requirements for NMPs contained in 40 C.F.R. § 122.42(e)(1)(vi)-(ix). Those regulations concern runoff to waters of the United States, as opposed to waters of the State. We recommend that, instead of referencing the Code of Federal Regulations, the definition instead references the requirements for NMPs in the permits themselves, found at Part V.B. The language in that part is almost identical to the federal regulations, except for the reference to waters of the State instead of the United States. This change is important, because EPD has authority and a duty to protect waters of the State, not just waters of the United States, from unpermitted agricultural discharges.

With those changes, we believe that the addition of an “agricultural stormwater discharge” definition will add clarity for regulated parties and enforcement officials.

### **III. Additional Comments**

We also have serious concerns that EPD allows extremely large AFOs to operate under general LAS permits instead of getting individual permits. There is a monumental difference between an AFO with 500 mature dairy cows, which can be covered by Permit No. GAG920000, and an AFO with 15,000 mature dairy cows, which can be covered by Permit No. GAG940000. We strongly urge EPD to revise Permit No. GAG940000 such that it only applies to AFOs with 1,001 to, at most, 3,000 animal units. The “3000 AU” number is consistent with the new definition of “animal unit” that describes how many animals can comprise 3,000 animal units or 3000 AU.

To bolster this comment, please consider the attached exhibit from Phil Freshley, an LAS expert and soil scientist who provided us with his opinion. We agree with many of Mr. Freshley’s conclusions and recommendations, although he offers different numbers, which could be incorporated into either general LAS permits or individual permits, as needed.

### **IV. Conclusion**

Overall, we support most of the revisions to the draft permits and urge EPD to make the changes identified in this letter. The most pressing additional revisions include more monitoring

and monitoring wells and an appropriate maximum size AFO that may be covered under general Permit No. GAG940000.

Again, thank you for the opportunity to provide these comments. If you have any questions, please contact April Lipscomb at [alipscomb@selcga.org](mailto:alipscomb@selcga.org) or 404-521-9900.

Sincerely,

A handwritten signature in cursive script, appearing to read "April Lipscomb".

April Lipscomb  
Senior Attorney