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Common Ownership: How to address in the CAFO world? The Control Issue

Presented by

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Topics

- What is a CAFO?
- Common Ownership and Control and the CAFO Regulations
- Questions and Solutions



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The down side of being a CAFO

- Setbacks
- Possible permit fees
- Recordkeeping
- Reporting
- Possible monitoring
- More outsiders visiting farm
- More outsiders knowing your business



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Getting around the system

- Incorporating portions of the AFO to “separate” them from the AFO
 - Regulators must prove common ownership or operator
 - In Maryland, we don’t ask if not obvious connection
 - Business structure does not affect whether land application area is part of the AFO
- Sending manure to a broker and having the broker deliver it to your land application area
 - Manure application is still under control of the operator/owner



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What is a CAFO?

- To be a CAFO, first it has to be an AFO
 - 40 CFR Part 122.23(b)(1):
 - **Animal feeding operation (AFO)** means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:
 - (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
 - (ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.



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What is a CAFO?

- 40 CFR 122.23(b)(2):
 - Concentrated animal feeding operation (CAFO) means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO ...
 - Large is based on number of animals
 - Medium is based on number of animals and:
 - 40 CFR 122.23(6)(ii) Either one of the following conditions are met:
 - » (A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or
 - » (B) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.



Issue #1: So, what areas are in a CAFO?

- Production Area: that part of an AFO that includes:
 - Animal confinement area
 - Manure storage area
 - Raw materials area
 - Waste containment area
- Land Application Area: land **under the control of an AFO owner OR operator**, whether it is owned, rented, or leased, to which manure, litter or process wastewater from **THE production area** is or may be applied.



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Meaning of “Land under their control”

- EPA Region 3 attorneys state that, “Land under their control is a broad term. In addition to land directly owned by the CAFO, it includes:
 - Land the CAFO owns but does not manage;
 - Land the CAFO does not own, but manages; and
 - Land owned or managed by related parties.”



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Issue #1A: What does manure from **THE** Production Area Mean?

- Possibility 1: only the manure generated by that AFO;
- Possibility 2: any manure applied to the land application area.
- In Maryland, we interpreted it as “any manure”, regardless of the source.



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Issue #2: Connecting Two + AFOs

- 40 CFR 122.23(b)(2): ... Two or more AFOs **under common OWNERSHIP** are considered to be a single AFO for the purposes of determining the number of animals at an operation, if
 - they adjoin each other; or
 - if they use a **common area or system for the disposal of wastes.**



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Two AFOs OWNED by the same entity

- Must adjoin each other, but can be separated by a right-of-way
- If **operated** by the same entity, does not necessarily connect them.
- If operated by **several managers**, does not separate them.
- The key is **ownership**.



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Use a common area or system for the disposal of waste

- Both AFOs' manure, litter, or process wastewater goes to the same manure shed, pit, or tank
 - In this case they do not have to adjoin each other
- In Maryland, we frequently combine separate AFOs under this rule.



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Land versus No-Land CAFOs in MD

- No-Land CAFOs
 - All manure, litter or process wastewater generated by the CAFO is exported to an operation that is not **under the control** of the operator or owner of the permitted CAFO.
- Land CAFOs
 - Manure, **regardless of its origin**, is applied to land **under the control** of the owner or operator of the permitted CAFO. If the field does not receive manure, then that field is not part of the CAFO.
 - The field does not have to be in the vicinity of the production area or other land under the control of the CAFO owner or operator.



Land application discharges from a CAFO may be subject to NPDES requirements

- 40 CFR 122.23(e): The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas **under its control** is a discharge from that CAFO subject to NPDES permit requirements, **except where it is an agricultural storm water discharge** as provided in 33 U.S.C. 1362(14)



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Questions

- How do you know when two AFOs are owned by the same entity?
- How do you show that a land application area is under the control of the AFO?
- Is the land application area part of the AFO only if it receives manure from the production area under the control of the owner or operator or also receives manure from other AFOs?
- **Why should it matter whether a land application area is under the control of an AFO if the state requires nutrient management plans for all farms?**



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Same AFO or Not ?

	Production Area	Land Application Area	Same AFO ?
Case 1	Gary Kelman, LLC	Gary Kelman, LLC	Yes
Case 2	Gary Kelman, LLC	Gary Kelman, Sole Proprietor	Yes
Case 3	Gary Kelman, Sole Proprietor	Gary Kelman, Sole Proprietor	Yes
Case 4	Gary Kelman, Sole Proprietor	Gary Kelman, LLC	Yes
Case 5	Gary Kelman, LLC	Sean Rolland, Sole Proprietor	Maybe (depends whether Sole Proprietor is on board of LLC)
Cse 6	Gary Kelman, Sole Proprietor	Sean Rolland, Sole Proprietor	No



**World
Farm Animals
Day**

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