**Section 502.106 Case-By-Case Designation Requiring NPDES Permits**

a) Despite any other provision of this Part, the Agency may require any Animal Feeding Operation not falling within Section 502.103 or 502.104 to obtain an NPDES permit by designating the Animal Feeding Operation as a CAFO upon determining that it significantly contributes pollutants to waters of the United States. In determining whether the Animal Feeding Operation significantly contributes pollutants, the Agency must consider the following factors:

1) The Animal Feeding Operation's size and the amount of livestock wastes reaching the waters of the United States;

2) The Animal Feeding Operation's location relative to the waters of the United States;

3) The means to convey livestock wastes into the waters of the United States;

4) The slope, vegetation, rainfall, and other factors relative to the likelihood or frequency of livestock waste discharge into waters of the United States; and

5) Other factors signifying the pollution problem sought to be regulated.

b) The Agency, however, may not require a permit under subsection (a) for any Animal Feeding Operation with less than the number of animals stated in Section 502.104, unless it meets either of the following conditions:

1) Pollutants are discharged into the waters of the United States through a human-made ditch, flushing system, or similar human-made device; or

2) Pollutants are discharged directly into waters of the United States that originate outside of and pass over, across, through, or otherwise come into direct contact with the animals confined in the operation.

c) In no case may a permit application be required from an Animal Feeding Operation designated under this Section until the operation has been inspected and determined that the operation should and could be regulated under the permit program.

d) Before designating an Animal Feeding Operation as a CAFO, the Agency must send the Animal Feeding Operation a written notice that it intends to designate the Animal Feeding Operation as a CAFO. The notice must include grounds for the designation and information regarding the opportunity to request a meeting with the Agency within 90 days after the Animal Feeding Operation's receipt of the notice to present evidence that it is not significantly contributing pollutants to the waters of the United States as provided in subsection (a). Beginning 90 days after the Animal Feeding Operation receives initial written notice, the Agency may designate the Animal Feeding Operation as a CAFO. The Agency must send the Animal Feeding Operation a written notice of its decision and grounds to designate in writing.

e) Upon receipt of the Agency's decision to designate, the owner or operator must apply for an NPDES permit with the Agency within 90 days. The Agency may issue an NPDES permit with a compliance schedule detailing interim steps to be taken along with a final date, not to exceed 14 months from the date the permit is issued, by which compliance with the Act and all applicable regulations must be achieved.

f) The question of whether the designation was proper will remain open while the permit application is pending. Any appeal of the Agency's designation decision must be made as part of an NPDES permit appeal.

(Source: Amended at 48 Ill. Reg. 3196, effective February 15, 2024)