

Guidance: No-Land Versus Land Animal Feeding Operation (“AFO”)

The Maryland Department of the Environment (the “Department”) is issuing this guidance to assist AFO operators in determining whether their AFOs are no-land AFOs or land AFOs.

- A “**no-land AFO**” consists ONLY of the “production area” of an AFO where animals are raised. According to the General Discharge Permit for Animal Feeding Operations (“AFO Permit”):
 - “Production area” means that part of an AFO that includes, but is not limited to, the animal confinement area, the manure storage area, the raw materials storage area, the waste containment areas, any egg washing or egg processing operation, and any area used in the storage, handling, treatment, or disposal of mortalities. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storage, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes settling basins, and areas within berms and diversions, which separate uncontaminated storm water.”
- A “**land AFO**” consists of the production area of an AFO together with its “land application area”.
 - Federal regulations (Title 40 Code of Federal Regulations, § 412.2(e)) define “land application area” as “*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.*”
- The business structure of the production area and land application area does not necessarily affect the no-land/land determination.

AFO owners and operators, in consultation with their nutrient management advisors/consultants and attorneys, must consider the above definitions when filling out their Notices of Intent (“NOIs”) and required plans to apply for or renew their coverage under the General Discharge Permit for AFOs (“AFO Permit”). The Department’s AFO Program staff is available to provide technical assistance concerning the above definitions. It cannot assist with any legal or business organizational questions. The Department recommends that each AFO review its no-land/land status and ensure that its NOI and required plans (either a Comprehensive Nutrient Management Plan (CNMP) or a combination of a Nutrient Management Plan (NMP) and a Conservation Plan (CP)) reflect this status.

To comply with the regulations:

- After a self-review, if an AFO that is currently registered under the existing AFO Permit (MDG01A/2014AFA) as a no-land operation has determined that it actually is a land AFO, the owner or operator must notify the Department by completing and submitting a new NOI form to the Department. The owner or operator must have its nutrient management advisor update the required plans. If this is necessary, since the AFO’s status was changed from a no-land to a land operation, the modification will be publicly noticed for a period of thirty days during which the public can submit written comments. The first twenty days of the comment period will also include an opportunity to request a public hearing.
- If the Department becomes aware that a no-land AFO is a land AFO, a revised NOI and required plan will be required to be submitted.
- In order to avoid republication of your NOI and required plans, it is best to make an accurate determination in the first place.

The Department is providing this guidance to assist AFO owners or operators comply with federal Clean Water Act requirements and State regulations. If the NOI and required plans are not completed accurately so as to reflect the existing operation of the facility, this may open the AFO to actions by third parties under the Clean Water Act. Any questions can be directed to Gary Kelman, Chief, AFO Division at gary.kelman@maryland.gov or 410-537-3314.