

FACT SHEET ON DEQ DECLARATORY RULING 2007-01

ISSUED BY DIRECTOR STEVEN CHESTER AUGUST 24, 2007

On June 27, 2007, the Department of Environmental Quality (DEQ) received a Request for a Declaratory Ruling (Request) from a number of agricultural interest groups and two individual concentrated animal feeding operations (CAFOs).¹ The Petitioners dispute whether the DEQ may require National Pollutant Discharge Elimination System (NPDES) permits from all large CAFOs regardless of whether a CAFO has had an “actual” discharge to surface waters of the state.

By state law, the DEQ was to deny the Request, reply to the Request, or seek additional information within 60 days. In light of the continued controversy for Michigan’s permitting program for large CAFOs, the DEQ elected to reply to the Request. The Petitioners now have an additional 60 days to appeal the decision to an appropriate Circuit Court.

Consistent with *Waterkeeper Alliance, Inc. v. US EPA*, a federal court decision from 2005, the United States Environmental Protection Agency (EPA) continues to modify federal rules governing CAFO permitting to comply with the *Waterkeeper* opinion. That opinion applies to federal law, not state law and Michigan continues to operate as a separate and distinct permitting authority under the state’s Natural Resources and Environmental Protection Act (NREPA).

Declaratory Ruling 2007-01 is posted on the DEQ Water Bureau’s webpage (located at: <http://www.michigan.gov/deq/0,1607,7-135-3313---,00.html>) within the “Spotlight” section. The conclusion of the ruling states:

¹ The Petitioners, represented by Andrew Kok of Varnum, Riddering, Schmidt, Howlett, are: Crockery Creek Turkey Farm; Four D Farms, LLC; Michigan Allied Poultry Industries; Michigan Cattlemen’s Association; Michigan Corn Grower’s Association; Michigan Farm Bureau; Michigan Milk Producers Association; Michigan Pork Producers Association; and Michigan Soybean Association.

- The CWA expressly allows states with approved NPDES permitting programs to enact regulations more stringent than corresponding federal regulations. The Michigan NPDES program operates under the authority of state law and rules.
- Part 31 of the NREPA provides the DEQ with broad authority to protect waters of the state from potential injury resulting in a state permitting program that is indeed more protective than the corresponding federal program.
- Michigan's CAFO Rule clearly requires all large CAFOs to apply for Michigan NPDES permits.
- Federal permitting under the CWA remains suspended so long as Michigan operates a permitting program at least as stringent as corresponding federal regulations.
- The USEPA has approved Michigan's CAFO Rule and has not reinstated federal permitting in the state.
- The Petitioners have not challenged the USEPA approval of Michigan's NPDES permitting program.

All large CAFOs in Michigan who have not previously obtained permit coverage under Michigan's NPDES permitting program were required to submit an application to the DEQ Water Bureau by July 1, 2007. While the vast majority of large CAFOs met the application deadline, a number of applications were not received and may result in enforcement action.