

REPORT TO THE LEGISLATURE

PUBLIC PARTICIPATION IN PERMITTING OF ANIMAL FEEDLOTS FOR FEEDLOTS UNDER 1,000 ANIMAL UNITS

**Required by Laws of MN 2003, Chapter 128, Article 3, Section 46
Adopted by the EQB December 18, 2003**

The 2003 Legislature directed the EQB to report by January 15, 2004, on public participation in the permitting of animal feedlots through the environmental review process and on how opportunities for public input are affected by exemptions from environmental review passed in the 2003 session. The complete text of the report requirements are presented in Appendix A. Essentially, the EQB must report on the following with respect to feedlots of less than 1,000 animal units: (1) significant issues that have been raised through the environmental review process (through citizen petitions or Environmental Assessment Worksheets (EAWs)); (2) mitigation that resulted from consideration of those issues; (3) opportunities for public participation under the MPCA feedlot rules permitting process; and (4) the impact on public participation due to the new statutory exemption.

Background: the environmental review process and animal feedlots

The increasing prevalence of confinement-type animal feedlots in Minnesota since around 1990 has been accompanied by much public controversy. The state environmental review process under the Environmental Policy Act, Minn. Stat., sec. 116D.04, has found itself in the middle of this controversy. One of the primary reasons for this is the citizens petition process component of the environmental review process. In situations where citizens were not satisfied with access to government permitting processes, the citizen petition process has often been seen as their best tool to force government decision-makers to listen to their concerns. On the other hand, some have viewed the filing of a citizens petition primarily as a tool for obstructing the permitting of an unpopular project. The issues of citizens petitions and feedlots came to a head in 2002 during the meetings of a Special Advisory Committee on Environmental Review Reform appointed by the EQB to advise on reforms to the environmental review process. Feedlots issues, especially the petition process, continually came up in those discussions, and various ideas for reforming the petition process were put forth. However, in the end, the Committee could not agree on any reforms to recommend to the EQB.

After the Committee did not agree upon any petition process reforms, representatives of the livestock industry recommended legislation to exempt certain feedlots from the citizens petition process altogether. This resulted in a legislative initiative to exempt those feedlots for which review was not mandatory under the EQB's rules and which were not located in any of the "sensitive areas" identified in those rules. The Legislature ultimately did exempt certain feedlots, as explained below, and at the same time directed the EQB to prepare this report on public participation in feedlot permitting.

New Exemption from Environmental Review for Certain Animal Feedlots

Laws of MN 2003, Chapter 128, Article 3, Section 40 created a new exemption (meaning that no Environmental Assessment Worksheet (EAW) or Environmental Impact Statement (EIS) can be prepared) for certain animal feedlots if they are not located in “sensitive areas” as defined in the EQB’s environmental review rules. (Sensitive areas include: shorelands; delineated flood plains; designated wild & scenic river districts; areas within a designated drinking water supply management area identified as vulnerable to contamination; and areas within 1,000 feet of karst geologic features.)

After July 1, 2003, such feedlots are exempted from environmental review if:

1. The new feedlot has a capacity less than 1000 animal units, or the feedlot has a total capacity of less than 1000 animal units after expansion; and
2. The application for the animal feedlot permit includes a written commitment by the proposer to design, construct and operate the facility in full compliance with Minnesota Pollution Control Agency (MPCA) chapter 7020 feedlot rules; and
3. The county board holds a public meeting for citizen input at least ten business days before the MPCA or county issues a feedlot permit, unless another public meeting for citizen input has been held with regard to the feedlot to be permitted.

Report Preparation Methodology

To develop information for this report about issues raised and mitigation identified through environmental review, the EQB staff examined its files on animal feedlot projects for which petitions were filed with the EQB from January 1, 2001, through June 30, 2003. This time period was chosen because the MPCA’s revised feedlot rules (chapter 7020) became effective in the fall of 2000. Because of the extensive changes made through those rules to the regulation of animal feedlots, EQB felt that only petitions filed after the revised rules went into effect would be reflective of the present situation. Where the petition resulted in preparation of an EAW, the EAW record was considered for this report. In addition to the nineteen petition filed, the EQB staff also included in this study the one EAW prepared during the same timeframe on a feedlot of less than 1,000 AU (960 AU) for which no petition was filed. The proposer volunteered for this EAW and it was prepared by the county. This EAW will henceforth be referred to as the “non-petitioned EAW.”

Nineteen valid petitions were filed on animal feedlot projects during the time period studied: eight in 2001, ten in 2002, and one in 2003. Counties were assigned as the Responsible Governmental Unit (RGU) for fifteen petitions, the MPCA for two, and the EQB handled two itself (due to exceptional circumstances).

The outcomes of the 19 petition cases are shown in Table I.

Table I. Petition Outcomes

Outcome	Outcome Subcategories	Total # Projects
Project exempt		2
Petition denied		7
EAW ordered		5
	By RGU 1	
	By a court 2	
	Voluntary 1	
	Mandatory 1	
Project withdrawn		2
Outcome not known (information not available)		3

The sizes of the feedlot project for which the petitions were filed were distributed as follows:

Less than 300 AU	1
300-499 AU	1
500-1,000 AU	16 (total)
500-749	7
750-899	0
900-999	9
Not known	1

At least sixteen of the nineteen feedlots (84%) were large enough (over 500 AU) to trigger the requirement (under Minnesota Statutes, sec. 116.07, subd. 7a) that neighbors be notified by the project proposer of the intent to build or expand a feedlot .

Issues and Environmental Impacts Raised by Petitions

The legislation directs the EQB to examine the “significant issues” raised by the petition process. However, in most cases, EQB staff could not determine from the available information if in their judgment a given alleged issue was potentially “significant.” Therefore, all explicitly-alleged issues described in the petitions were included in this study. Some information is presented later about whether the RGU found alleged issues significant.

The general **environmental issues** and specific concerns contained in the 19 petitions and one non-petitioned EAW are categorized and tabulated in Table II.

Table II. Environmental Issues Identified

Type of Issue	# Petitions	# Petitions by Subcategory of Type of Issues * (Based on reasons given for issue in petition)
Surface water pollution	17	
		Flooding of site or manure fields 2
		Tile intakes in manure fields 3
		Too near water body 2
		Ditch/watercourse nearby 4
		Tiling/drainage problems 5
		Poor site topography 2
Groundwater pollution	16	
		Karst features 3
		Uncapped wells in manure fields 6
		Sensitive public water supply 1
		Shallow neighbors' wells 4
		Shallow water table 2
		Porous soils 1
Air quality and odor	15	
		Sensitive neighbors (asthma, etc) 7
		Sensitive resources/features: 9 (total)
		Church 4
		Recreation area 2
		Town Hall 1
		School 1
		Adult foster home 1
Groundwater depletion	8	
Development of antibiotic-resistant bacteria	10	
Noise & dust	9	
Miscellaneous issues:	5 (total)	
Convert prime farmland	1	
Spread animal diseases	1	
Carcass composting	1	
Wildlife impacts	2	
Cumulative air quality problems (proposal combined with other nearby feedlots)	8	

*Note: because a petition could state more than one reason for concern about a general type of issue, the number of subcategories listed under each general type of issue do not necessarily add up to the total listed for that general type.

Among the 19 petitions and one non-petitioned EAW, three environmental impact types were cited in at least 15: surface water pollution, groundwater pollution, and air quality and odor impacts. The specific reasons for concern over these impacts were more variable from petition to petition as can be seen from the number and frequency of the subheadings in the table, reflecting the different locations and circumstances of the projects in question. The most common single reason, the presence of persons with asthma or other respiratory sensitivities in the vicinity, was cited in 7 petitions.

As indicated above, EQB staff could not evaluate which of the alleged issues were potentially “significant.” However, based on the RGUs’ judgment, it appears that in about one-third of the instances (7 of the 20 cases) the RGU found at least one alleged issue potentially significant because either mitigation was imposed or an EAW was ordered. The impacts identified included potential air quality and odor, surface water, and groundwater pollution.

Issues or impacts that are not “environmental” as defined by the EQB rules (Minn. Rules, part 4410.0200, subp. 23) found in the petitions are tabulated as follows:

<u>Type of impact</u>	<u># of petitions alleging this impact</u>
Decrease property values of neighboring properties	9
Damage to roads (from heavy trucks servicing feedlot)	6
Increased traffic	2

Although they are not within the meaning of “environment” as defined in the EQB’s environmental review rules, decrease in neighboring property values and damage to local roads due to heavy trucks servicing the feedlots were often cited in petitions.

Mitigation, Avoidance & Treatment Resulting from Environmental Review

The EQB staff evaluated the nineteen petition files and one non-petitioned EAW file to determine whether any mitigation, avoidance or treatment measures (collectively termed “mitigation” here) were required on the feedlot projects as a result of the environmental review. This evaluation only considered mitigation of the environmental impacts.

In six cases it was found that specific mitigation was imposed for impacts noted in the petition. However, in four of those cases the record indicated that the mitigation was more the result of permitting requirements than of environmental review. Some examples of the mitigation identified were oil sprinkling to minimize airborne dust and other emissions; requiring a floodplain boundary determination at the site to ascertain if flooding was likely; requiring notice to neighbors within a certain distance prior to land spreading manure; and prohibiting application of manure within 500 feet of any

residence. In four additional cases, the records indicated that mitigation measures were considered in responding to the petition but found unnecessary to address the issues raised. In the remaining cases, either events occurred which made the question of mitigation irrelevant (e.g., no permit application was ever filed or because the project was found exempt the merit of the petition's issues were never directly addressed) or the record was insufficient to determine whether mitigation was considered or required.

Public Input Opportunities under the MPCA 7020 Feedlot Rules and Local Permitting Processes

The Legislature directed the EQB to “also examine the process of public notifications, hearings, and opportunities for local residents and property owners to provide input under the MPCA’s feedlot rules permitting process.” Because other permitting processes, particularly those of local government, also provide opportunities for public input, these other opportunities are also discussed in this section.

Permits issued to feedlots of less than 1,000 animal units under the MPCA’s feedlot rules, Minn. Rules, chapter 7020, are issued in two ways. The permits may be issued directly by the MPCA or, if the county board opts for delegation of the authority, the permit is issued by the county on behalf of the MPCA. At present, 55 counties are delegated to issue feedlot permits.

MPCA 7020 Rules Permitting Process

MPCA’s Feedlot Rules have different procedural requirements for constructing and operating a facility based on how many animal units (AU) are located at a facility. The different categories are: under 300 AU; 300 – 999 AU; and 1,000 AU and over. This report addresses those feedlots that are less than 1,000 AU. For feedlots of less than 1,000 AU, permit, notification and public input requirements vary depending upon whether the feedlot has a known compliance problem or pollution hazard situation.

Table III summarizes the general notification requirements and public input opportunities for permits issued to feedlots with less than 1,000 AU that do not have identified compliance problems or pollution hazards (as defined in 7020.0300, subp. 19a). This situation applies to the majority of permits issued to feedlots of less than 1000 AU.

Feedlots under 1,000 AU that have identified compliance problems or a pollution hazard as defined in Minn. R. part 7020.0300, subp. 19a may require an Interim permit, State Disposal System (SDS) permit, or National Pollutant Discharge Elimination System (NPDES) permit depending on their circumstances, as discussed below. The public input opportunities for these three types of permits are as follows. Interim permits have no public notification requirements. Both SDS and individual NPDES permits follow the general permitting procedural requirements in Minn. Rules chapter 7001. These provide a 30-day public notice period; an opportunity for citizens to comment on the draft permit; opportunity to request an informational meeting; and an opportunity to request that the MPCA Citizen Board hear permit concerns or hold a contested-case hearing. The General NPDES Permit was noticed in 2001 prior to issuance. Facilities covered under this permit are not re-noticed for public comment.

**Table III. Type of permits and notification procedures for feedlots under 1,000 AU
WITHOUT compliance problems or pollution hazards**

Number of animal units	Type of permit	Government notification	Public notification
Under 300 for construction or expansion up to 300*	No permit required; must comply with technical standards in ch.7020	-Local zoning/MPCA notified 30 days prior to construction -MPCA or delegated county notified 3 days prior to construction and 3 days after completion	None
Under 300 for operation*	No permit, must operate in compliance with 7020 and must be registered in accordance with 7020.0350	Only registration is required	None
300-999 for construction	Construction Short Form	-Permit application submitted 90 days prior to construction -local zoning notified 30 days prior to construction -MPCA or delegated county notified 3 days prior to construction and 3 days after completion	- A county that has not accepted delegation must hold public meeting prior to MPCA issuing permit for facility of 300 animal units or greater (Minn. Stat. §116.07, Subd. 7 (l)). -For feedlots over 500 AU, the project proposer must notify real property owners within 5,000 feet of the project. MPCA or delegated county may not issue permit for 20 business days after this neighbor notice is given. (Minn. Stat. §116.07, Subd. 7a)
300-999 for operation	No permit; must operate in conformance with ch. 7020 & must be registered in accordance with 7020.0350	Only registration is required	None

* Construction of a new feedlots under 300 AU or the expansion of an existing feedlot by less than 100 AU which are outside of sensitive areas, were exempt from environmental review prior to the 2003 statutory amendments.

Operating feedlots that have between 300-999 AU where a pollution hazard exists, must obtain an Interim Permit. Operating feedlots between 300-999 AU that are using different technical standards than those found in Minn. Rules ch. 7020, must obtain an SDS permit. An NPDES permit is needed if the feedlot is defined as a Concentrated Animal Feeding Operation (CAFO) in federal regulations.

Operating feedlots with less than 300 AU that have compliance problems must obtain an Interim permit in order to correct the situation, unless they are eligible for the Open Lot Agreement. Feedlots with less than 300 AU that use different technical standards than those found in Minn. Rules ch. 7020, must obtain an SDS permit. In extremely rare cases, a feedlot with less than 300 AU may be designated as a CAFO by the MPCA. If the feedlot is designated as a CAFO, the owners would need a National Pollutant Discharge Elimination System (NPDES) permit.

Pursuant to Minnesota Statutes, sec. 116.07, subd. 7 (1), if the MPCA does not hold a public meeting in association with issuing a permit for a feedlot of more than 300 AU, the county must hold such a meeting (unless another entity holds such a meeting instead). Thus, one way or another, all feedlots over 300 AU in a non-delegated county must have a meeting held prior to the issuance of the appropriate permit by MPCA.

Counties' Permitting Processes

The MPCA 7020 rules contain no provisions specifying public input procedures to be used by a delegated county to process and issue a feedlot permit. Consequently, the public input opportunities in each delegated county are up to the county. Unless a county adopts specific public input procedures to use in its processing of feedlot permits, the opportunities for public input to a county on a feedlot proposal would depend upon such opportunities as exist in other county permitting processes, most typically, the conditional use permit process.

Whether a delegated county or not, most counties require conditional use permits for at least some animal feedlots. Conditional use permits require certain basic opportunities for public input. By statute, (Minn. Stat. sec.394.26, subd. 1a) public hearings are required prior to the issuance of any conditional use permit. Notice of the hearing must be given at least ten days in advance by publication in a newspaper of general circulation in the area and in the official newspaper of the county. In addition, notice must be sent to owners of record of any property within 500 feet in incorporated areas, or, in unincorporated areas, to all owners of record within ¼ mile or to the ten nearest property owners, whichever would give notice to the greater number of owners. (Minn. Stat., sec. 394.26, subd. 2.)

Typically, conditional use permit hearings are held by the county's planning commission, but may also be held by the county board or an official appointed for the purpose. If the planning commission does not have final authority for issuing the conditional use permit, by statute it must review and report on the permit to the county board. (Minn. Stat., sec. 394.30, subd. 4.)

Assessment of Impact on Public Participation of 2003 Legislative Changes to Citizens Petition Process

It was the intention of EQB staff when planning this report to assess how the new exemption provisions affected public participation by analysis of situations where a citizens petition was filed but the project then became exempted by virtue of a public meeting for citizen input being held. Staff had intended to compare the information in the petitions to that in the meeting summaries to see if the same information was conveyed through both. However, at the time this report was prepared, although five months had elapsed since the exemptions adopted by the 2003 Legislature went into effect on July 1, only one citizens petition had been filed in that time on an animal feedlot project. Moreover, in that case the permit application was withdrawn and the petition needed no response. Therefore, there have been no situations to assess as planned for this report.

Without any cases to analyze, it is too early to tell how the legislative exemptions passed in 2003 affect the citizens opportunity for input into feedlot permitting. The EQB staff will continue to monitor cases where petitions are filed on feedlot projects to try to ascertain whether and in what ways the new exemptions have affected citizen input as further information comes to light. It is possible that other methodologies might be developed to assess the effect of the new exemptions in some indirect way.

APPENDIX A.

Laws of MN 2003, Chapter 128, Article 3, Section 46

Sec. 46. [FEEDLOT ENVIRONMENT REVIEW STUDY; REPORT.]

The environmental quality board shall conduct a study identifying and evaluating information pertaining to environmental review of feedlots of fewer than 1,000 animal units in Minnesota that must include:

- (1) significant issues that have been raised during the environmental review process;
- (2) avoidance, mitigation, and treatment that resulted from consideration of environmental impacts; and
- (3) an assessment of the impact of Minnesota Statutes, section 116D.04, subdivision 2a, paragraph (d), on public participation.

The study shall also examine the process of public notifications, hearings, and opportunities for local residents and property owners to provide input under the pollution control agency's feedlot rules permitting process.

The board shall report by January 15, 2004, to the committees of the house of representatives and the senate with jurisdiction over agricultural, environmental, and judiciary policy, and agricultural finance on the results of the study.