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# Concentrated Animal Feeding Operations/Clean Water Act: Food & Water Watch Petition Challenging the U.S. Environmental Protection Agency's Decision to Forego Revisions

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The organization Food & Water Watch ("FWW") filed a document styled:

*Petition for Review of an Action by the U.S. Environmental Protection Agency ("Petition")*

The *Petition* is filed pursuant to Section 509(b)(1) of the Clean Water Act before the United States Court of Appeals for the Ninth Circuit.

The *Petition* challenges what it describes as EPA's final action:

. . . determining that revision of the effluent limitations guidelines for the Concentrated Animal Feeding Operation ("CAFO") industrial point source category (40 C.F.R. § 412) is not appropriate at this time.

See 86 Fed. Reg. 1960 Jan. 11, 2021. The EPA Federal Register Notice is titled:

*Effluent Guidelines Program Plan 14; Notice of Availability*

Section 304(m) of the Clean Water Act requires that EPA biennially publish a plan for new and revised effluent limitations guidelines, after public review and comment.

Plan 14 has been described as identifying:

. . . any new or existing industrial categories selected for effluent guidelines or pretreatment standards and provides a schedule for their development.

By way of background, Section 301(b) of the Clean Water Act authorizes EPA to promulgate national categorical standards or limits to restrict discharges of specific pollutants on an industry-by-industry basis. These effluent limits are incorporated into a point source discharger's National Pollution Discharge Elimination System permit as a baseline minimum requirement.

Clean Water Act effluent limits are derived from research regarding pollution control technology used in the industry. The analysis will include the degree of reduction of the pollutant that can be achieved through the use of various levels of technology. The applicable standard is dictated by the kind of pollutant discharged (i.e., toxic, conventional, or non-conventional) and whether a new or existing point source is involved.

Industrial categories are often further divided into subcategories. The effluent limits/conditions for the subcategories will be tailored to the performance capabilities of the wastewater treatment or control technologies used by the subcategory.

EPA's development of categorical effluent limits is an ongoing process. The agency continues to promulgate categorical standards for facilities that have not been addressed. Existing categorical standards are also assessed to determine if revisions are warranted. The motivation for a change to an existing standard will often be the need to incorporate evolving technological developments.

EPA's decision to forego revisions to the CAFO point source category is the subject of the challenge.

A copy of the *Petition* can be downloaded [here](#).