

US EPA ARCHIVE DOCUMENT

# **PROPOSED EPA PROJECT XL: UNITED EGG PRODUCERS**

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## **EXECUTIVE SUMMARY:**

United Egg Producers (UEP) proposes an XL project that would exchange regulatory flexibility in the form of CAFO egg layer operations' coverage under NPDES statewide general permits (rather than individual permits), in return for superior environmental performance by member operations exceeding regulatory size thresholds established by EPA and states. Superior environmental performance would be verified by certified third-party auditors. EPA would assure that states would honor the XL agreement to limit coverage to general permits except in unusual situations. Operations smaller than the regulatory thresholds would be urged by UEP to also practice superior environmental performance voluntarily through educational programs, workshops, internet programs, and published materials.

## **DESCRIPTION OF THE EGG PRODUCTION INDUSTRY:**

UEP is a farmer cooperative representing egg producers nationwide, most of whom own their flocks and do not contract out the production as in the broiler production industry. Most farms are integrated from the point of production through the final marketing of the eggs. Although there are only about 500 egg production companies, the U.S. egg industry is a major contributor to the nation's food supply. It currently supplies approximately 240 eggs per year to each of the nation's 260 million people.

In recent years, there has been rapid consolidation of the industry into fewer, but much larger companies that are generally still operated as "Family Farms" with the owner still on the farm making day to day decisions. They are generally clean, well-run operations with on-staff agronomists and environmental control people. While smaller farms (<200,000 birds) still exist, the economics of egg production, collection, cleaning, processing and shipping generally dictate large operations (500,000 to 5 million birds).

Remarkably, this industry which is generally characterized as large operations is also generally characterized as environmentally benign. This small industry has a high level of environmental awareness through it's UEP Environmental Committee, twice monthly newsletters which include articles written by environmental experts, environmental awards and member recognition, and regional workshops, seminars and conferences on environmental topics. In a recent UEP survey to which 30% of its members replied, only six farms reported ever having received a noncompliance penalty.

Most farms (approximately 80%) are solely dry litter operations, in which chicken litter is collected and stored in water-tight cement pits below the bird cages, dried for several months, and:

- annually removed for sale or gift to third parties (75%) ,
- spread on nearby farmland owned or controlled by the egg producer (15%), or
- composted into mulch or pelletized for sale into the nursery or retail garden markets (20%).

Smaller operations are more likely (75%) to sell their eggs to larger operations for washing and processing, where collection and disposal of egg wash water is often a permitted activity. Between 50% and 60% of the large egg production operations (>1 million birds) store egg wash water and spread it on land they own or control. Although egg wash water lagoons are most common among those who wash eggs on site, some operators collect egg wash water in large tanks and haul it weekly to water treatment centers.

In the industry survey mentioned above (replies from farms in AL, CA, CO, CT, FL, GA, IA, IL, IN, MD, MI, MN, MO, NE, NC, NJ, OH, OR, PA, SC, TX, UT, VA, WA and WI.), UEP determined that:

- Only about 12% of the egg production operations operate under NPDES permits (zero % of those <200,000 birds), but between 50% and 60% (regardless of farm size) operate under state permits or regulations, and between 40 and 50% also operate under local permits or regulations.
- Components of those permits generally include requirements for nutrient management plans (about 60% of farms), restrictions on egg wash water (about 40% of farms), restrictions on temporary field stacking of manure (about 25% of farms), restrictions on land application of litter (up to 80% of farms), restrictions on dead bird disposal (about 40% of farms), requirement for training and record keeping (about 60% of farms), and require annual soil and litter nutrient analyses (50% of farms).
- On-farm inspections are generally complaint driven, with a large percentage of farms never inspected. For example, the UEP member survey reported that of small farms (< 200,000 birds) about 44% got an average of 1.25 inspections per year (56% were not inspected). Of medium farms (200,000 to 1 million birds) about 53% got an average of 1.27 inspections per year (47% were not inspected). Of large farms (> 1 million birds), 61% got an average of 2.60 inspections per year (39% were never inspected).

**SUMMARY OF PROJECT:**

Most UEP members are large enough (>100,000 birds) to be defined as Concentrated Animal Feeding Operations. In fact, most are much larger and fully 58 operations raise more than a million birds each. However, under current permitting procedures and Clean Water Act regulations few have been required to comply with federal NPDES permits (although a majority operate under state and/or local permits and requirements). Those that do have individual NPDES permits (generally for handling and land application of egg wash water) complain of high costs, resource constraints and compliance requirements that often handicap cost-effective operations. Faced with the prospect that many members (those in the "exceptionally large" category) likely would soon be required to have individual NPDES permits, UEP members seek a guarantee that all states will issue their CAFO members a general permit in exchange for outstanding performance resulting in a "zero discharge" status.

UEP wishes to work with EPA and states to launch an education and audit program to certify all UEP members as "zero discharge" farms – covered by general NPDES permits regardless of operation maximum size or location. UEP members wish to exchange ongoing superior environmental performance for EPA's assurance that states will honor the agreement to regulate UEP members under a general permit only (not requiring individual permits). The mechanisms of this proposed XL project are as follows;

- UEP would expand its industry education program. This would include printed and internet information, demonstration projects, regional workshops, and other activities on nutrient management planning, employee training and permit compliance, designed to prepare its members for superior environmental performance. UEP would solicit grant funding for this from EPA under §104(b)(3) or other provisions;
- UEP would help organize an industry third party litter users program designed to help recipients of litter and manure understand how to properly develop nutrient management plans so they can comply with EPA guidance for offsite utilization of CAFO-generated litter;
- UEP will work to help establish an EPA-approved third-party certification program to verify "zero discharge status" among all CAFO operations covered by general permits. This would relieve the pressure on states to perform inspections on the egg industry. Perhaps using the certified inspectors of the National Pork Producers Association's on-farm audit program, EPA, UEP, and stakeholder partners would jointly determine the conditions of this superior environmental performance.
- UEP assumes that, to successfully pass a zero discharge audit, physical components of participating operations (buildings, load out pads, equipment and vehicles) would need to be properly designed and operated to prevent discharge of contaminated runoff, and waste management practices would

need to be fully in compliance with the general permit's comprehensive nutrient management plans. Appropriate provisions also would be included for record keeping, employee training, and directing proper off-site, third-party utilization of poultry litter.

**PROJECT XL CRITERIA: A. SUPERIOR ENVIRONMENTAL PERFORMANCE:**

Part of EPA's regulatory efforts at this time seeks to remove the tension that exists between current law and the AFO Strategy. Under current law, an operation is not a CAFO and need not have a permit unless it discharges in other than a rare 25-year, 24-hour storm, has and/or uses inappropriate practices, allows direct contact between animals and water flowing across the property, or is likely to be a significant contributor to pollution. However, newly proposed EPA guidance for state general NPDES permits seeks to prepare the livestock and poultry industries for upcoming rulemaking that would require all CAFOs to have NPDES general or individual permits. But such rulemaking is several years away from completion, and EPA must rely on state cooperation with the newly proposed guidance to achieve these goals.

This proposed XL project would codify those anticipated conditions today for the egg production industry, and present the general permit as an incentive mechanism for large producers to maintain superior facilities and practices. The proposed XL project would provide EPA an exceptional precedent during this period of major regulations overhaul for the livestock sectors.

Other environmental gains would be recognized as well. Currently only a portion of egg production operations are fully inspected. Most AFOs and many CAFOs have never been inspected. Through UEP's efforts and those of the third party auditors, comprehensive assessments will be made of the CAFOs in the industry, areas of needed improvements noted, and detailed information on how to comply fully with the terms of the general permit will be provided UEP members. Those operations that are smaller than the regulatory threshold would also be urged to practice superior environmental performance. The industry association would play a continuing role in education and compliance motivation.

**PROJECT XL CRITERIA: B. FLEXIBILITY AND OTHER BENEFITS:**

The regulatory flexibility included in this proposed XL project is as follows:

- **EPA assurance:** EPA assures that states will honor the XL Project agreement to regulate participating UEP members (those CAFOs which have successfully undergone a zero discharge audit) under statewide general permits, regardless of egg producers' maximum size or location, unless EPA determines on a case by case basis that particularly egregious conditions exist which must be addressed by an individual permit. Participants would enjoy the nuisance suit shield provided for compliance with NPDES permits. Some accidents could be tolerated under the general permit, provided that they are insignificant, not due to mismanagement and immediate notice is provided.

**PROJECT XL CRITERIA: C. STAKEHOLDER INVOLVEMENT:**

We propose to develop this XL project with the full knowledge and input from two stakeholder groups: the Association of State and Interstate Pollution Control Administrators (ASIWPCA) and the Soil & Water Conservation Society (SWCS). ASIWPCA's members are the state water regulators in whose states the UEP members operate their egg production facilities. From their membership ASIWPCA would identify a team to help design the components of the audit and on-farm Best Management Practices that would allow a farm to qualify for zero discharge status. SWCS would provide a conservation perspective to these decisions.

In addition, UEP would likely undertake stakeholder outreach activities such as:

- Publish the "certified zero discharge" XL project in local newspapers in the areas of each participating farm;
- Conduct a briefing for national environmental and public interest groups'
- Publish periodic articles on the XL project in appropriate farm magazines, conservation magazines, etc.; and
- Undergo a 30-day comment period for the XL project.

**PROJECT XL CRITERIA: D. INNOVATION or POLLUTION PREVENTION:**

This proposed project is an innovative strategy for achieving better environmental performance by voluntarily implementing the regulatory components of the Unified AFO Strategy immediately, qualifying for "zero discharge status" and then operating under a statewide general permit. Pollution prevention would result from the ongoing pride and commitment to maintain the "certified zero discharge" status, as well as the knowledge that if an Act of God or accident should occur, the general permit would provide a shield. Components of a typical Comprehensive Nutrient Management Plan would likely include:

- a scaled site map of all land application areas;
- crop rotations or sequences on the land application areas;
- all records of soil tests, manure nutrient analyses, and calculations and determinations;
- nutrient budgets for the land application areas;
- historic yields and future goals for the land application areas;
- records of calibration of equipment used in the land application of manure and wastewater;



- planned rates, method, frequency and timing of application of manure and wastewater to the land application areas;
- actual rates, method, and dates of application of manure and wastewater to the land application areas, as determined during the period of this permit;
- the amounts of N and P applied to the land application areas;
- weather records, including precipitation in inches; and
- records of training of personnel involved in land application of manure and wastewater;
- records of litter sold or given away, dates and amounts, identity of receiving entity, nutrient content, and records of information provided the receiving entity. Some provisions for assisting third parties with nutrient management planning.

**PROJECT XL CRITERIA: E. TRANSFERABILITY:** This process could well be a model for other aspects of the livestock sector to adopt.

**PROJECT XL CRITERIA: F. FEASIBILITY:** There is broad support for the proposed XL project. UEP has the support and resources commitment of its Board of Directors and membership to pursue the project. Potential stakeholders (ASIWPCA and SWCS) have shown initial support. Capitolink LLC will provide some of the technical support.

**PROJECT XL CRITERIA: G. EVALUATION, MONITORING AND ACCOUNTABILITY:** UEP would play a key role in tracking, evaluating and reporting the progress and performance of the assessment team and participating farm operations for the life of the project. A performance checklist will be developed which assessment team members use to characterize individual operations. The check list will also serve as a data collection form for tracking the progress of the project and the performance of an individual producer.

Data from this project will be published electronically on two industry websites: <http://www.Capitolink.com> and <http://www.AgricultureLaw.com>, as well as in UEP's newsletter and other print media.

**PROJECT XL CRITERIA: SHIFTING RISK BURDEN:** It is not the intent of this proposed project to shift any risk burden. In fact, just the opposite is envisioned: through superior environmental performance those egg production operations which qualify for

"certified zero discharge" status will provide a role model for the others in the industry and outside the egg production industry.

**ENFORCEMENT AND COMPLIANCE PROFILE:** The industry in general can be considered a "good actor" although individual operations have, from time to time, encountered problems on their sites. When individual operations petition to participate in the proposed XL project by filing a Notice of Intent with their respective state regulatory organization or EPA, there will be ample opportunity to consider their past performance.

**SCHEDULE INFORMATION:** UEP assumes that the proposed project would:

- Continue indefinitely, assuming all members are "certified zero discharge" operators in compliance with a statewide general permit;
- Involve an initial implementation period of less than 6 months for the industry. UEP would begin the education efforts immediately, and would identify for EPA the states in which UEP members would want to operate under a statewide general permit. EPA would gain state concurrence by early 2000.
- Milestones associated with the implementation of the proposed project include Federal Register publication and consideration of comments received; EPA approval of the project; recruitment of appropriate stakeholder groups; reaching agreement with EPA over the legal wording of the flexibility, qualification and jeopardy components; fund raising; establishing the third-party audit program; hiring the auditors; completion of audits and certification of zero discharge operators; monitoring and reporting results on an ongoing basis.
- There are relevant permit dates and meeting dates that we wish to meet. First, the NPDES guidance document will likely be finalized this fall and CAFO permits issued early in 2000. UEP would definitely wish this XL project to immediately initiate the general permitting process for egg producers considering an audit under this program. Second, the UEP annual meeting is in mid-October, at which UEP has invited Chuck Fox or his designate to speak to UEP members on this project and its status.