

Administrative Law Assignment
Advanced Legal Research
Prof. Furnish & Janoski-Haehlen
Due Date: 4/20/09

Your Name Here: _____

You are a new associate assigned to work on the firm's John Morrell & Co. account. John Morrell & Co. is a well known Cincinnati company which manufactures and distributes pork products in the Midwest and parts of the Northeast. A company representative, will be meeting with the firm to discuss the changes to EPA's regulations of large livestock feedlots. John Morrell & Co. is interested in cutting transportation costs and building animal feedlots closer to their processing plant operations in Cincinnati. The trade terminology used to describe to animal feedlots is Animal Feeding Operations - AFOs and Concentrated Animal Feeding Operations – CAFOs.

You will be working with the Morrell Account team and you have been asked to report back with the text of the final regulations and sources comparing the old regulations with the new revisions. You will be distributing information to the team, so you need to keep an accurate and detailed paper trail of your research efforts. Since you are a smart researcher, you plan to compile a list of the key search terms and to keep track of your research results.

The team leader routed the following newspaper article to you:

"EPA Changes Pollution Controls for Farms" By H. JOSEF HEBRT Associated Press posted in The Cincinnati Enquirer date Saturday 11/1/2008 page A5.

WASHINGTON: The U.S. Environmental Protection Agency issued new pollution control requirements for large livestock feedlots **Friday [10/31/08]** that would allow farm operators to avoid having to get a permit if they affirm that the facility will not put harmful discharges into nearby waterways.

EPA officials said the new requirements call for a "zero discharge standard" and also will require farm operators to develop management plans that prevent the runoff of excessive environmentally damaging nutrients such as nitrogen and phosphorous into lakes and streams.

The new rules provide "a strong national standard for pollution prevention and environmental protection while maintaining our country's economic and agricultural competitiveness," Benjamin Grumbles, the EPA's assistant administrator for water, said in a statement.

Environmentalists have long complained that animal feedlots, large farm operations where hogs and cattle are fattened before slaughter, pollute waterways because of their huge buildup of manure, which is piled up or spread across the land.

The EPA issued new pollution control requirement on such feedlots in 2003, but that regulation was overturned by the courts two years later. The rules issued Friday, to go into effect next February, are an attempt to comply with the court ruling.

Under the rules, a feedlot would not automatically have to obtain a pollution discharge permit and could be certified as voluntarily complying with the "zero discharge" standard. Operators would determine whether their facility was releasing or would release pollution into waterways

based on the design of the facility and its operation. If they conclude no discharges will take place, they can operate without applying for a federal permit.

Environmentalists complained this provision will let many of the feedlot operators off the hook.

"This regulation allows these industrial meat farms to avoid the Clean Water Act altogether by certifying that they have taken voluntary action to avoid discharges," said Eric Schaeffer, a former EPA enforcement official who now is director of the Environmental Integrity Project, an advocacy group.

Because feedlot owners are allowed to determine whether they should seek a pollution permit, "it literally puts the foxes in charge of their gigantic hen houses, as well as hog and dairy confinement operations," said Schaeffer.

The EPA estimated that the requirements will prevent the release into streams, lakes and other waterways of 56 million pounds (25.4 million kilograms) of phosphorous, 110 million pounds (50 million kilograms) of nitrogen and 2 billion pounds (910 million kilograms) of sediment a year.

The National Pork Producers Council called the new rules "tough but fair" and said they set a high environmental standard for the feedlots, known within the industry as Concentrated Animal Feeding Operations (CAFO).

"Pork producers are ready and willing to comply with the new regulations," said Randy Spronk, a pork producer from Minnesota, who is chairman of the council's environment committee.

Spronk acknowledged that "many CAFOs may choose not to get a federal permit because they are confident they will not discharge." But he added "with or without a permit, swine operations that are not well managed and have discharges are facing severe penalties."

You did not find the regulations in the Federal Register dated Friday 10/31/08. You said to yourself the reporter must be talking about an EPA Press Release announcing forthcoming regulations. From your Advanced Legal Research Class, you remember that newspaper articles are not precise and that regulations can appear in the Federal Register approximately a few days to thirty days after a Press Release.

1. Go to the **U.S. EPA web site** and find the **Press Release** concerning large animal feeding operations. Provide the contact information given: EPA contact, telephone # and email address.

2. Use the **U.S EPA web site** to further your knowledge of the issues. The EPA web site is massive so use the **SEARCH BOX** or the **A-Z Index** features to answer the following questions.
 - a). Locate the **U.S. Environmental Protection Agency's Office of Wastewater Management (OWM) web site**. Describe the agency's responsibilities.

- b). Still using the Office of Wastewater Management (OWM) web site, locate the *Animal Feeding Operations* web page. Provide definitions for Animal Feeding Operation AFOs and Concentrated Animal Feeding Operation CAFOs.
- c). Link to the *CAFO Rule History* web site and list seven different events which lead to the EPA's regulation changes in late 2008.
3. Locate the final regulations in the Federal Register using the **GPO Access Federal Register web site** <http://www.gpoaccess.gov/fr/index.html> . Use the "Advanced Search" feature to search for the final regulations concerning CAFOs.
- a). List the search terms you have developed and other methods of limiting your search when using this "Advanced Search" web page. HINT: List the features on the page which you can use to limit/improve your search.
- b). What is the Federal Register citation? [**Bluebook format required**].
- c). Use the final regulation to answer the following:
1. Why did the EPA revise the CAFO regulations?
 2. When are the final regulations effective?
 3. What is the statutory basis for the regulation?

4. Where will the final regulations appear in the CFR?

 5. Provide the contact for further information. Include name, office title, phone number, and email address.
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4. Use the e-CFR Electronic Code of Federal Regulations to answer the following:
 - a). Describe the purpose of the e-CFR and how it differs from the Code of Federal Regulations?

 - b). Locate the codified version of the final regulations, your answer to question 3. c (4)
 1. Which section of the CFR discusses concentrated animal feeding operations applicable to state NPDES programs.

 5. See what your favorite research tool, Google, provides on this issue. Use the Google "Advanced Search" feature to look for information. You are looking for reliable information on animal feeding operations and concentrated animal feeding operations.
 - a). List the key terms you used and how you applied the "Advanced Search" features.

 - b). Did you locate the actual 2008 final regulations or any helpful background information? One sentence description will do.

 - c). List your three best search results/ I need the titles of the web sites and the web addresses.

NOTE: Google search results can be disappointing when you are looking for a specific date range. The date search feature applies the time period in which the web page was indexed by Google and has nothing to do when a page was created.

You provided copies of the Federal Register to the team and discussed the history of the regulation. The leader of the Morrell Account was pleased and asked you to look into two more aspects of the research issue.

6. He wants you to locate a Government Accounting Office (GAO) study which reviewed the use of large animal feedlots or CAFOs in the U.S. He heard the study was fairly critical of the EPA and the study was completed sometime in 2008. Use the GAO web site to answer the following questions:

a). What does the GAO do and who is the head of the GAO? State why or you think this web site is biased or unbiased?

b). Browse the "Reports and Testimony" web site and look for a description of how GAO Reports get their start – who requests them and why.

c). Look for the GAO Report on animal feedlots or CAFOs. Provide the title of the study, GAO Study Number and report date.

d). Read the first pages, the summary and recommendations portions, of the report. The GAO faults the EPA for what? Your answer should be brief one to two sentences.

7. The research attorney wants you to locate the Kentucky regulations on animal feedlots and CAFOs. He thinks the state regulations generally tend to be more restrictive than the federal regulations. This will impact whether the animal feedlots will be located in Kentucky.

a). Use the Kentucky Administrative Regulations web site to locate the various regulations affecting concentrated animal feeding operations. Look for the section of the KAR which describes the *Scope and Applicability of Kentucky Pollutant Discharge Elimination System*.

1. Provide the KAR citation. **[Bluebook format required]**.

b). Skim through the same section of the KAR and answer the following:

1. What Kentucky Agency regulates CAFOs and other types of discharges into the waters of the Commonwealth?

2. What section of the Kentucky Revised Statutes [KRS] states that the cabinet shall not impose any permit requirements, effluent limitation or condition which is more stringent than what is applicable under federal regulations. [Bluebook format not required].

Administrative Decision Question

8. Another attorney for the firm asks if you are free to some quick research. You jump at the chance to be rescued from more pig farm research. She needs the following:

Edward Tiemann was the subject of a disciplinary proceeding under the Packers and Stockyards Act of 1921 before a judicial officer of the United States Department of Agriculture in 1988. **Locate the administrative law decision and provide the docket number. Also list the attorney for the Agriculture Department (the Complainant in this case).**

Open Ended Optional Bonus Question [1 to 4 points]:

List **four different methods/resources** you might use to locate information on the use of large feedlots CAFOs in Kentucky. Here are some sample questions the John Morrell & Co. would ask before investing. [List sources **official or unofficial** which you could use to get to get information].

- a) How many CAFO's are in Kentucky and in what counties are they based?
- b). What companies invested in CAFOs in Kentucky?
- c). Are there any court cases involving large animal feedlots in Kentucky