

Great Lakes National Program Office—G-9J, 77 West Jackson Street, Chicago, IL 60604; telephone: (312) 353-1369; or John Dorkin, USEPA Region 5—WS-16J, 77 West Jackson Street, Chicago, IL 60604; telephone: (312) 886-1980.

**SUPPLEMENTARY INFORMATION:** See also Notice of Availability of draft Great Lakes Manual at 59 FR 65358, December 19, 1994; proposed rule at 60 FR 419, January 4, 1995; and Notice of Availability of Inland Testing Manual at 63 FR 10218, March 2, 1998. Proposed discharges of dredged or fill material in Great Lakes Waters must be evaluated to determine the potential environmental impacts of such activities. Specifically, section 404 of the Federal Water Pollution Control Act of 1972, Pub. L. 92-500, as amended by the CWA, Pub. L. 95-217, requires that the discharge of dredged or fill material into waters of the U.S. be permitted by the CE. EPA has the primary role in developing the environmental guidelines—the section 404(b)(1) Guidelines (Guidelines)—in conjunction with the CE, by which permit applications must be evaluated. The Guidelines are published at 40 CFR part 230. Fundamental to the Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.

Dredged material testing is part of the larger section 404(b)(1) evaluation of a proposed discharge activity to determine its compliance with the Guidelines. Sections 230.60 and 230.61 of the Guidelines provide the basis for certain contaminant-related factual determinations regarding the potential environmental effects of a proposed discharge. The Great Lakes Manual provides regional guidance on the testing provision of the Guidelines, supplementing the draft National Manual which was noticed for comment in the **Federal Register** on July 21, 1994 (59 FR 37234) and a proposed rule for the Comparison of Dredged Material to Reference Sediment at 60 FR 60419. These manuals detail the physical, chemical, and biological evaluation procedures outlined in §§ 230.60 and 230.61, including technical guidance on sampling and handling, quality assurance, chemical and physical analysis, and biological effects testing. The Great Lakes Manual contains more specific information for the Great Lakes system, including detailed bioassay test protocols. Conclusions reached utilizing

the manuals will be used to make factual determinations of the potential environmental effects of a proposed discharge of dredged material.

Dated: December 2, 1998.

**Jo Lynn Traub,**

*Acting Regional Administrator, Region 5.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6204-7]

### Registration and Agreement for Clean Water Act Section 301 Compliance Audit Program for the Pork Production Industry

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) and the National Pork Producers Council (NPPC) have agreed to a comprehensive and voluntary Clean Water Act Compliance Audit Program (CAP). The NPPC, which represents pork producers nationally, plans to have independent auditors conduct more than 10,000 of the audits nationwide to improve environmental management practices and assure compliance with the Clean Water Act. The Clean Water Act CAP provides incentives for pork producers to undertake voluntary comprehensive on-farm environment assessments by greatly reducing penalties for any Clean Water Act violations that are promptly disclosed and corrected under this program. Participation in the NPPC audits or CAP process is voluntary. This Notice announces the opportunity for pork producers to register for EPA's Clean Water Act Section 301 Compliance Audit Program (CAP) for the Pork Production Industry. This Notice also announces the availability of the text of the Agreement (CAP Agreement), which producers may sign to register for the program.

**DATES:** Producers with existing pork production facilities must register for the CAP agreement by Sept. 30, 2001. For facilities that are completed after Sept. 30, 2001, producers must register by Sept. 30, 2003. Persons interested in participating in the CAP must register by sending a signed CAP Agreement to EPA before the end of the applicable registration period.

**ADDRESSES:** Copies of the CAP Agreement text may be obtained from <http://www.epa.gov/oeca/ore/porkcap>. Pork producers who want to register for

the program can contact their local pork producers' organization or the National Pork Producers Council, at 1776 NW 114th St., Clive, Iowa 50325. Attention: Andy Baumert; Phone: (515) 223-2600.

**FOR FURTHER INFORMATION CONTACT:**

Additional information about the CAP and the CAP Agreement is available from EPA by contacting Ciannat M. Howett, Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement, Water Enforcement Division (Mailcode: 2243-A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Pork producers who want additional information about the CAP Agreement can contact their local pork producers' organization or the National Pork Producers Council, at 1776 NW 114th St., Clive, Iowa 50325. Attention: Andy Baumert; Phone: (515) 223-2600.

**SUPPLEMENTARY INFORMATION:** The Clean Water Act Compliance Audit Program (CAP) provides incentives for pork producers to have comprehensive on-farm environmental assessments conducted on their pork production facilities. The purpose of the assessments is to determine whether pork production facilities are conforming with good environmental management practices for this industry and to assess compliance with the Federal Clean Water Act.

The National Pork Producers Council (NPPC), which represents pork producers nationally, is proposing to have independent auditors conduct these on-farm environmental assessments at more than 10,000 of the producers' facilities. EPA hopes to encourage this voluntary environmental assessment by substantially reducing civil penalties for violations that are promptly disclosed and corrected as a result of these audits. The program provides certainty regarding EPA's response to reported violations.

This program was developed after the NPPC approached EPA to propose an environmental assessment program for the industry. The NPPC audit protocol establishes a rigorous evaluation process for reviewing pork production facilities that is designed to assure the protection of our nation's waterways by improving environmental management controls at pork farms throughout the United States. The CAP is the result of an agreement between EPA and the NPPC that provides reasonable incentives for pork producers without compromising EPA's and the States' ability to consistently and appropriately enforce the law. This voluntary program demonstrates how government and industry can come together to find

practical and resourceful solutions for reducing waste runoff into our nation's rivers, lakes and streams.

NPPC's audit procedure is known as the On-Farm Odor/Environmental Assistance Program, referred to as the "On-Farm Environmental Assessment" for purposes of the CWA Section 301 Compliance Audit Program being announced today. The Assessment process involves a detailed review and on-site inspection of pork production facilities and waste handling methods by trained, independent assessors. EPA has evaluated the NPPC assessment process and found it to be a useful tool for assessing CWA compliance and improving environmental practices at pork production facilities. NPPC has committed to encouraging producers to participate in the program, ensuring the availability of the On-Farm Environmental Assessment process to producers who wish to participate, and promoting high-quality assessments by well-trained assessors. NPPC will also serve as coordinator for the On-Farm Environmental Assessment program and as liaison between participating producers and assessors by scheduling assessments; assigning assessment teams to conduct particular assessments; gathering preliminary information about the production facilities; and ensuring that the assessment teams conduct audits and promptly prepare Assessment Reports (as described in the CAP Agreement) for the producers.

The CAP is open to all pork producers in the country, but excludes slaughterhouses, pork processing and packing facilities, or areas of ancillary operations such as equipment or feed storage or cropland—other than cropland used for land application of swine waste. In coordination with NPPC, EPA has developed a nationwide enforcement agreement ("CAP Agreement") that is available to any pork producer who takes part in the NPPC environmental assessment program. To be eligible for the CAP program, participating pork producers must identify and report Clean Water Act (CWA) violations within 120 days of the start of an assessment, and correct them within specified timetables (depending on the violation). The auditor must certify that the assessment was conducted properly according to the protocol, producers must certify that the report submitted to EPA is complete and accurate, and an auditor or licensed engineer must certify that the report is complete and accurate.

Producers that report and correct the violations within the timetable and otherwise comply with the CAP

Agreement are eligible for reduced penalties. Penalties are based on economic benefit and range from \$250 to \$10,000 for violations, with a maximum cap of \$40,000. As an additional incentive to quickly correct violations, the agreement provides even greater penalty reductions to producers who correct violations within shorter timeframes. There is one exception to the fixed penalty provisions. In those instances (which EPA expects to be rare) where the producer has almost wholly failed to invest in ordinary animal waste pollution control facilities (such as by failing to construct any waste storage pits or lagoons) no fixed penalty will be available, but instead EPA may seek to recover the economic benefit to the producer of its non-compliance up to \$40,000. Nonparticipating pork producers could face civil penalties of up to \$27,500 per day for CWA violations identified independently by EPA.

However, there are some limitations to the CAP. It applies only to Clean Water Act NPDES violations. The CAP Agreement would not apply to violations already discovered by EPA or a State, or that are already the subject of a citizen suit action. The program also reserves EPA's ability to pursue injunctive relief when there is a discharge and where there is an "imminent and substantial" endangerment under section 504 of the Clean Water Act, and to recommend prosecution for criminal conduct. Furthermore, EPA may impose penalties and seek all other available remedies where a pork producer fails to comply with the CAP Agreement. The program does not relieve the producer from the obligation to comply with all CWA permits, regulations and other applicable environmental laws and regulations.

EPA will consult closely with the States in determining whether discharges under the program meet the requirements of the Agreement. States may elect to administer the CAP Agreement; in those cases, EPA would refer any CWA violation disclosures to the State for consideration and response under the terms of the CAP agreement. EPA strongly encourages any NPDES-approved State to implement the CAP Agreement with respect to producers located within the State. In order to implement the agreement, States should contact Brian J. Maas, Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement, Water Enforcement Division (Mailcode: 2243-A), Environmental Protection Agency, 401 M Street, SW Washington, DC, 20460, or

the appropriate Regional office and enter into a written agreement with EPA to comply with the terms of the CAP Agreement with respect to each registering producer. States implementing the agreement will receive all reports of completed Assessments from producers, as well as any reports of violations pursuant to the CAP. These States will also enter into the Consent Agreements/Orders to accomplish enforcement with regard to the violations reported under the CAP.

In addition to promoting this nationwide On-Farm Environmental Assessment program, the CAP announced today will provide a streamlined enforcement mechanism that will help obtain CWA compliance by numerous facilities without overwhelming EPA's enforcement resources. Because enforcement under the CAP Agreement will include corrective action, the program is expected to provide significant environmental benefits.

Industry representatives and EPA believe that this program will result in On-Farm Environmental Assessments at well over 10,000 pork production facilities, comprising most of the large (over 1000 animal units) and medium-sized (over 300 animal units) facilities in the United States. Together these facilities account for approximately 80% of U.S. pork production. The program thus promises to provide EPA with a substantially stronger national compliance assurance and enforcement effort than would otherwise be achievable. This program will also allow EPA to concentrate its enforcement resources on producers that choose not to participate in the CWA Section 301 Compliance Audit Program. Such non-participating producers should be aware that EPA intends to actively pursue violations of the Clean Water Act at pork production facilities.

Producers with existing pork production facilities must register for the CAP agreement by Sept. 30, 2001. For facilities that are completed after Sept. 30, 2001, producers must register by Sept. 30, 2003. Pork producers who want to register for the program can contact their local pork producers' organization or the National Pork Producers Council, at (515) 223-2600.

Dated: December 9, 1998.

**Brian J. Maas,**

*Office of Enforcement and Compliance Assurance.*

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