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Lawsuit Challenges Factory Farm Secrecy

Environmental and Animal Protection Groups Seek
Access to Pollution Data

ALBANY (July 26, 2007)—The Delaware Riverkeeper Network, The Humane Society of the United States, the Delaware Riverkeeper, and American Littoral Society filed suit in the New York Supreme Court in Albany today. The organizations are challenging the New York State Department of Environmental Conservation's concealment of the terms of water pollution permits issued to Concentrated Animal Feeding Operations (CAFOs). The suit asks the court to order NYSDEC to release the records publicly.

CAFOs are large scale "factory farm" facilities that raise animals for meat, eggs, and dairy. The animals, who are often so intensively confined they can barely move, produce massive amounts of manure and have degraded water quality in lakes and streams across the country. According to recent reports, the CAFO industry grew by 22 percent from 2002 to 2005* and is a growing trend; at least two intensive confinement facilities, both undergoing expansion, are located in the Delaware River Watershed on the Middle Mongaup River. One of them, Hudson Valley Foie Gras has a history of violations of its discharge permits, spilling manure and releasing bacteria and chlorine into the river.

The federal Clean Water Act (CWA) and New York's Environmental Conservation Law (ECL) require that these facilities obtain pollutant discharge permits and that the terms of these permits, supporting data and compliance reports be made available to the public. The primary component of a CAFO permit is something called a nutrient management plan (NMP) that specifies what must be done with the manure and other wastes these facilities produce. Yet the New York Department of Environmental Conservation refuses access to NMPs that must be available to the public under the CWA, ECL, and New York's Freedom of Information Law (FOIL).

"The inability of citizens in New York State and across the country to gain access to these nutrient management plans severely undermines the role Congress intended citizens to play in the oversight and enforcement of water pollution permitting," states Maya van Rossum, the Delaware Riverkeeper and head of the Delaware Riverkeeper Network. "In order for the public to know how waste is being handled at a CAFO, we need the nutrient management plan. Otherwise we can't effectively do our job of defending the river from pollution."

"Factory farms have huge impacts on animal welfare and the environment, which should not be kept secret from the public," said Sarah Uhlemann, a staff attorney with the Animal Protection Litigation of The HSUS. "These facilities not only confine thousands of animals at one facility, they also generate 500 million tons of manure each year – about 3 times more raw waste than humans in the United States generate."*

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Facts:

- According to the EPA, the agriculture sector, including CAFOs, is the leading contributor to water quality problems in the Nation's lakes, rivers, and streams.
- CAFOs frequently release pollution through manure spills or by applying manure as fertilizer at rates higher than plants can absorb, causing runoff to waterways.
- Manure contains several pollutants, including fecal coliform which indicates the presence of disease-causing bacteria.
- Manure also contains a variety of nutrients, including nitrogen and phosphorus that can stimulate excessive plant growth, contributing to algal blooms and nuisance plants.
- Some CAFOs confine hundreds of thousands of animals at one time, forcing animals to live in cramped conditions that prohibit normal movement and behaviors.

Timeline:

- July 26, 2007: Delaware Riverkeeper Network and The Humane Society of the United States file a lawsuit in the New York Supreme Court for the County of Albany, New York, charging that the denial of the NMP records is arbitrary and capricious and asking the court to order NYSDEC to release them publicly.
- Feb. 28, 2005: The United States Court of Appeals for the Second Circuit held that a NMP must be publicly available because it constitutes an "effluent limitation" that must be included in a CAFO permit.

*Little, Amanda, "Ag Reflex", 30 Jun 2006, grist.org

*U.S. Environmental Protection Agency, National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), 68 Fed. Reg. 7176 (Feb. 12, 2003)