

What Are My Rights When Dealing with EPD/EPA?

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Significant Recent Regulations

GUNSTER

CAFOs
WOTUS

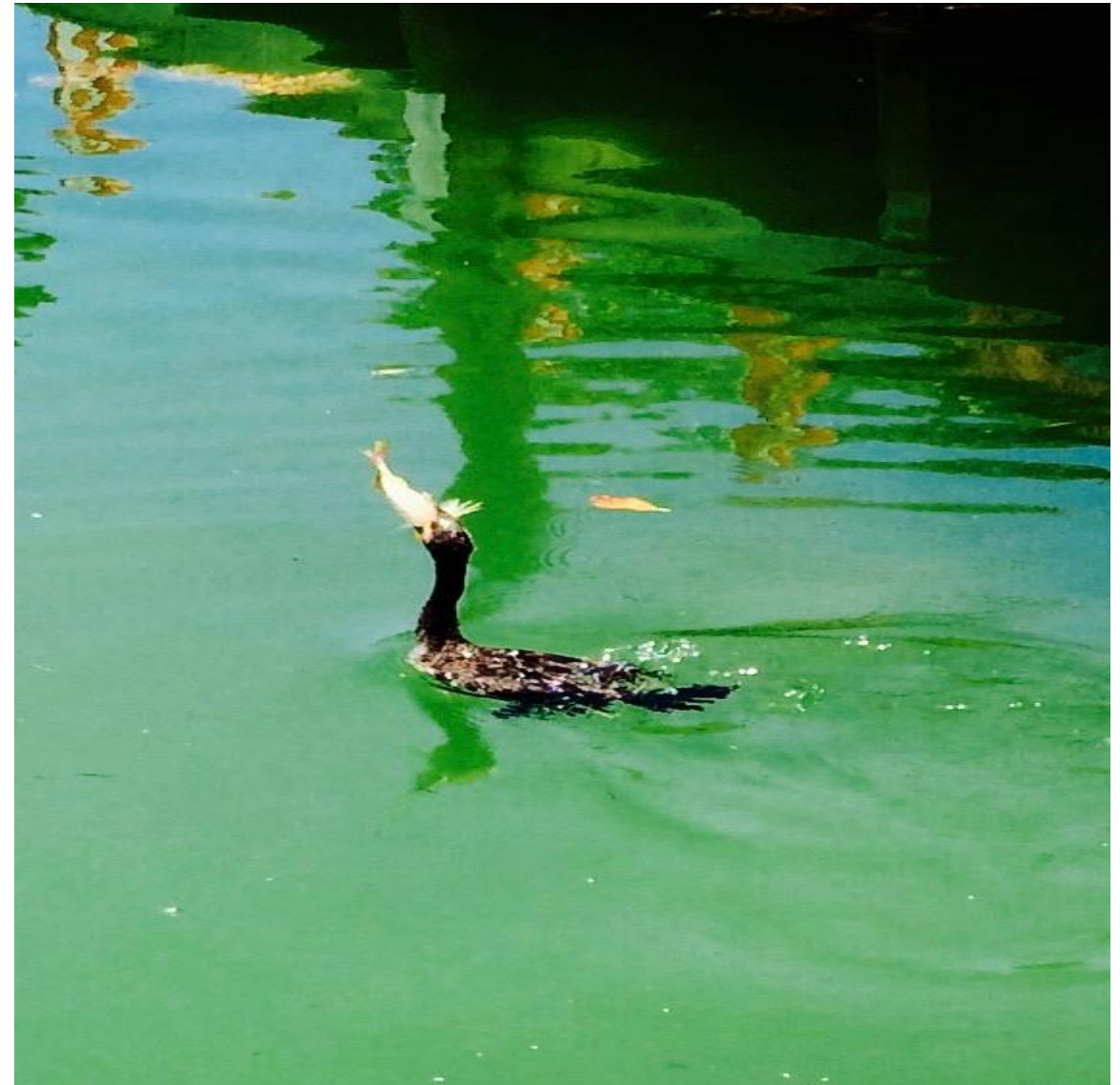
NNC

TMDL

CO2

NMP

Groundwater



Keep Up With Regulations

- New rules lead to additional permit requirements
- Make sure concerns of Dairies are addressed in state rule making
- That is a primary benefit of being in an association
- Be prepared to submit comments, alternative language and information on the economic impacts
- Challenge the validity of the rule if concerns not adequately addressed

Rights in Rulemaking

- Appeal Rule
- Demonstrate it extends beyond the statutory authority of EPD
- Arbitrary or capricious

Track Compliance with Rules when Effective

- Train employees in key parts of rules applicable to industry
- EPD
- Department of Agriculture
- Ag Extension Service
- Ga. Milk Producers



Rights to Appeal Draft Permit

- **Do Not Accept Permit With Which You Can't Comply**
- Legislature has provided right to appeal draft permit
- Allow time to informally negotiate permit with written request for extension of time to file appeal (avoids expensive litigation)
- The extension, if granted, ensures the right of appeal is not waived

Administrative Hearing Process

- Petitions for hearing are filed with EPD
- Petitions are then forwarded to the ALJ
- The burden of proof of showing the permit was properly drafted and with an agency authority is on EPD
- Hearing is formal, similar to a trial without jury
- An attorney should be retained for assistance

Track Compliance with All Permit Conditions

- Once the permit is effective, set up tracking mechanism for all permit conditions
- Calendar all compliance dates including monitoring and reporting
- Timely application for permit renewal
- Assistance available from Department of Agriculture or extension service



Enforcement Actions

- Keep track of time to file a petition for hearing or answer
- An extension of time may frequently be granted from the requirement to file an answer or petition for hearing
- Make sure any extension is formalized through a written document
- Consult with an attorney

Civil vs Criminal Liability

- Willful or knowing
- Falsification of tests
- Reporting of false data
- Examples

Tell the Truth

- Report accurately (penalties for failure)
- Certification of compliance
- Certification of tests
- Protection of company and individuals through documentation

Audits and Self-reporting

- Do internal and external environmental compliance audits
- May wish to use attorney for confidentiality
- Promptly report any issues of noncompliance, insuring credit is obtained for self-reporting
- Document self-reporting of any issues found by audit
- Propose a compliance fix as part of reporting

Inspections

- Statutory authority
- Inspections at reasonable times
- Presentation of credentials
- Copy of Report of inspection
- Sampling and split samples

Use of Audit

- Self-evaluation
- Avoid enforcement
- Determine compliance with permits, monitoring and reporting requirements
- Margin of Safety and Housekeeping
- Trends to insure permits and rules will be met



Taking

- If requirements are imposed that are too onerous to operate other remedies may be available
- The courts have recently allowed actions to be brought alleging that regulatory restrictions were so severe that the taking of property may have occurred

Questions?

