

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR DISCHARGES FROM CONCENTRATED ANIMAL FEEDING
OPERATIONS (CAFOs) IN NEW MEXICO (NMG010000)**

U.S. Environmental protection agency region 6

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)**

In compliance with provisions of the Clean Water Act, 33 USC 1251 et seq., the “Act,” owners and operators of concentrated animal feeding operations (CAFOs) in New Mexico, except those CAFOs excluded from coverage in Part I of this permit, are authorized to discharge and must operate their facility in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A copy of this permit must be kept by the permittee at the site of the permitted activity.

This permit will become effective

This permit and the authorization to discharge under the NPDES shall expire at midnight

Signed this

Bill Luthans
Acting Director
Water Quality Protection Division

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PART I. PERMIT AREA AND COVERAGE**A. Permit Area**

This permit offers NPDES permit coverage for discharges from operations defined as concentrated animal feeding operations (CAFOs) in the State of New Mexico (except Indian Country).

B. Permit Coverage

This permit covers any operation that meets the definition of a CAFO (see Part VII of this permit) and discharges or proposes to discharge pollutants to waters of the United States. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. Once an operation is defined as a CAFO, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

C. Eligibility for Coverage

Unless excluded from coverage in accordance with Paragraph D or F below, owners/operators of existing, currently operating animal feeding operations that are defined as CAFOs or designated as CAFOs by the Permitting Authority (See Part VII Definitions, "CAFOs") and that are subject to 40 CFR Part 412, Subparts A (Horses and Sheep) and C (Dairy Cows and Cattle Other than Veal Calves) are eligible for coverage under this permit. Eligible CAFOs may apply for authorization under the terms and conditions of this permit, by submitting a notice of intent (NOI) to be covered by this permit (see Appendix A).

CAFO owners/operators may also seek to be excluded from coverage under this permit by (1) submitting to the Director (see Part I.E.4) a notice of termination form (see Appendix B) or (2) by applying for an individual NPDES Permit in accordance with Part I.F.

D. Limitations on Coverage

The following CAFOs are not eligible for coverage under this NPDES general permit, but must apply for an individual permit:

1. CAFOs that have been notified by EPA to apply for an individual NPDES permit in accordance with Part I.F (below) of this permit.
2. CAFOs that have been notified by EPA that they are ineligible for coverage because of a past history of non-compliance.
3. Duck, Veal, Poultry or Swine CAFOs.
4. Coverage under this permit is available only if your discharge will not adversely affect any species that are federally-listed as endangered or threatened ("listed") under the Endangered Species Act (ESA) and will not result in the adverse modification or destruction of habitat that is federally-designated as "critical

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habitat” under the ESA. CAFOs seeking coverage under this general permit must follow the conditions outlined in Part III.D.8 of this permit.

5. CAFOs that do not meet the National Historic Preservation Act eligibility provisions contained in Appendix C of this permit.
6. CAFOs that discharge to waters designated by the State as Tier 3 (outstanding natural resource waters) for antidegradation purposes under 40 CFR 131.13(a)(3) (see list of Tier 3 waters on EPA’s website at <http://www.epa.gov/npdes/stormwater/msgp>).
7. New dischargers to water quality impaired water (CWA, 303d list) unless the operator:
 - a. prevents any discharge that contains pollutant(s) for which the waterbody is impaired, and includes documentation of procedures taken to prevent such discharge in the NMP; or
 - b. documents that the pollutant(s) for which the waterbody is impaired is not present at the facility, and retains documentation of this finding with the NMP; or
 - c. in advance of submitting the NOI, provides to EPA data to support a showing that the discharge is not expected to cause or contribute to an exceedance of a water quality standard, and retains such data onsite with the NMP. To do this, the operator must provide data and other technical information to EPA sufficient to demonstrate:
 - i. For discharges to waters without an EPA approved or established TMDL, that the discharge of the pollutant for which the water is impaired will meet in-stream water quality criteria at the point of discharge to the waterbody; or
 - ii. For discharges to waters with an EPA approved or established TMDL, that there are sufficient remaining wasteload allocations in an EPA approved or established TMDL to allow the facility’s discharge and that existing dischargers to the waterbody are subject to compliance schedules designed to bring the waterbody into attainment with water quality standards.

Operators are eligible under this section if they receive an affirmative determination from EPA Region 6 that the discharge will not contribute to the existing impairment, in which case the operator must maintain such determination onsite with the NMP.

8. CAFOs with discharges subject to New Source Performance Standards (NSPS) at 40 CFR Part 412, **unless** the facility submits an Environmental Information Document (EID) in accordance with Part I.E.8.
9. CAFOs that are located on Indian lands in New Mexico.

E. Application for Coverage

1. Owners/operators of CAFOs seeking to be covered by this permit must:
 - a. Submit an NOI to the Director.
 - i. The owner/operator of any CAFO covered under the 1993 CAFO General Permit

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- must submit an NOI to the Director within 90 days of the effective date of this permit. For any CAFO covered under the 1993 CAFO General Permit that meets this deadline, authorization under the 1993 CAFO General Permit is automatically continued until coverage is granted under this permit or coverage is otherwise terminated;
- ii The owner operator of any CAFO that submitted an application for coverage under an individual permit prior to issuance of the general permit must submit an NOI to the Director within 90 days of the effective date of this permit.
 - b. Submit a nutrient management plan (NMP) with the NOI that meets the requirements of 40 CFR 122 and 412, where applicable.
2. CAFO owners/operators may submit an NOI after the applicable date in either a or b, above. Regardless of when the NOI is submitted, the CAFO's authorization is only for discharges that occur after permit coverage is granted. The Permitting Authority reserves the right to take appropriate enforcement actions for any unpermitted discharges.
 3. If a CAFO has submitted an application for coverage under an individual permit prior to issuance of the general permit and is seeking to be covered by this general permit, the CAFO must submit an NOI for coverage.
 4. Signature Requirements: The NOI must be signed by the owner/operator or other authorized person in accordance with Part VI.E of this permit.
 5. Submittal of NMP: An NMP must be submitted that meet the requirements of the provisions of § 122.42(e) (including, for all CAFOs subject to 40 CFR Part 412, Subpart C or Subpart D, the requirements of 40 CFR 412.4(c), as applicable) and Part III.A of this permit.
 6. Where to Submit: CAFOs must submit a signed copy of the NOI and NMP by mail to:

U.S. Environmental Protection Agency, Region 6
Water Quality Protection Division
Planning and Analysis Branch (6WQ-N)
1445 Ross Avenue
Dallas, TX 75202-2733
 7. Upon receipt, EPA will review the NOI and NMP to ensure that all permit requirements are fulfilled. EPA may request additional information from the CAFO owner or operator if additional information is necessary to complete the NOI and NMP or clarify, modify, or supplement previously submitted material. If EPA makes a preliminary determination that the NOI is complete, the NOI, NMP and draft terms of the NMP to be incorporated into the permit will be made available for a 30-day public review and comment period. EPA will respond to comments received during this period and, if necessary, require the CAFO owner or operator to revise the nutrient management plan. If determined appropriate by EPA, CAFOs will be granted coverage under this general permit upon written notification by EPA. (see Part III.A.2)
 8. For new sources: The National Environmental Policy Act (NEPA) requires EPA to conduct an environmental review and issue an Environmental Impact Statement (EIS) or Finding of No

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Significant Impact (FNSI) prior to allowing permit coverage of new sources (i.e., Large CAFOs whose construction began after April 14, 2003). New sources seeking permit coverage must submit an Environmental Information Document (EID) along with their NOI and NMP. Information concerning preparation of an EID can be obtained by writing to Office of Planning and Coordination, EPA Region 6, 1445 Ross Ave., Dallas, TX 75202, by accessing <http://www.epa.gov/earth1r6/6en/xp/enxp4c.htm> or by contacting the Office at 214-665-7453.

These NEPA requirements also apply to new source expansions of existing CAFOs. A new source expansion is one which meets the definition of a new source (40 CFR 122.2) and the new source criteria (40 CFR 122.29(a) and (b)). So EPA may determine if an expansion is a new source, the applicant must submit to EPA information describing the expansion (i.e., what is being expanded, how the expansion relates to the existing operation, etc.), as well as a map showing the location of the expansion. If EPA determines the expansion to be a new source, the owner/operator must prepare and submit an EID as described above. This information must be submitted to the Region 6 Environmental Clearance Office at the address listed above. Additional information concerning this requirement may be obtained by contacting the Environmental Clearance Office at 214-665-7453.

F. Requiring an Individual Permit

1. EPA may at any time require any facility authorized by this permit to apply for, and obtain, an individual NPDES permit. EPA will notify the operator, in writing, that an application for an individual permit is required and will set a time for submission of the application. Coverage of the facility under this general NPDES permit is automatically terminated when: (1) the operator fails to submit the required individual NPDES permit application within the defined time frame; or (2) the individual NPDES permit is issued by EPA.
2. Any owner/operator covered under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner/operator shall submit an application for an individual permit (Form 1 and Form 2B) with the reasons supporting the application to EPA. If a final, individual NPDES permit is issued to an owner/operator otherwise subject to this general permit, the applicability of this NPDES CAFO general permit to the facility is automatically terminated on the effective date of the individual NPDES permit. Otherwise, the applicability of this general permit to the facility remains in full force and effect (for example, if an individual NPDES permit is denied to an owner/operator otherwise subject to this general permit).

G. Continuation of this Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 40 CFR 122.6 and remain in force and effect. If you were authorized to discharge under this permit prior to the expiration date, any discharges authorized under this permit will automatically remain covered by this permit until the earliest of:

1. Your authorization for coverage under a reissued permit or a replacement of this permit following your timely and appropriate submittal of a complete NOI requesting authorization to discharge under the new permit and compliance with the requirements of the new permit; or
2. A formal decision by EPA to grant the permittee's request for termination of permit coverage; or
3. Issuance or denial of an individual permit for the facility's discharges; or

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4. A formal permit decision by EPA not to reissue this general permit, at which time EPA will identify a reasonable time period for covered dischargers to seek coverage under an alternative general permit or an individual permit. Coverage under this permit will cease at the end of this time period.

H. Change in Ownership

If a change in the ownership of a facility whose discharge is authorized under this permit occurs, a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees must be submitted to EPA at the address specified in Part I.E.6. EPA will notify the current and new permittees if the transfer of permit coverage is granted.

PART II. EFFLUENT LIMITATIONS AND STANDARDS

A. Effluent Limitations and Standards

The following effluent limitations apply to facilities covered under this permit:

1. Technology-based Effluent Limitations and Standards - Production area.

There shall be no discharge of manure, litter, or process wastewater pollutants into waters of the United States from the production area except as provided below.

- a. Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into waters of the United States provided:
 - i. The production area is properly designed, constructed, operated and maintained to contain all manure, litter, process wastewater plus the runoff and direct precipitation from the 25-year, 24-hour storm event for the location of the CAFO; and
 - ii. The design storage volume is adequate to contain all manure, litter, and process wastewater accumulated during the storage period considering, at a minimum, the following:
 - (A) The volume of manure, litter, process wastewater, and other wastes accumulated during the storage period;
 - (B) Normal precipitation less evaporation during the storage period;
 - (C) Normal runoff during the storage period;
 - (C) The direct precipitation from the 25-year, 24-hour storm;
 - (D) The runoff from the 25-year, 24-hour storm event from the production area;
 - (E) Residuals solids after liquid has been removed;
 - (F) Necessary freeboard to maintain structural integrity; and
 - (G) A minimum treatment volume, in the case of treatment lagoons.
- b. The production area must be operated in accordance with the additional measures and records specific in Part II.A.2 of this permit.

2. Other Limitations – Applicable to the Production Area

a. Additional Requirements

In addition to meeting the requirements in Part II.A.1 of this permit, the permittee must implement the following additional requirements.

- i. Conduct weekly visual inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structures.
- ii. Conduct daily visual inspections of all water lines, including drinking water and

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- cooling water lines.
- iii. Install a depth marker in all open surface liquid impoundments. The depth marker must clearly indicate the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event. The marker shall be visible from the top of the levee.
 - iv. Conduct weekly inspections of the manure, litter, and process wastewater impoundments noting the level as indicated by the depth marker installed in accordance with Part II.A.2.a.iii.
 - v. Correct any deficiencies that are identified in daily and weekly inspections in a timely manner.
 - vi. Properly dispose of dead animals within three (3) days unless otherwise provided for by the Director. Mortalities must not be disposed of in any liquid manure or process wastewater system that is not specifically designed to treat animal mortalities. Animals shall be disposed of in a manner to prevent contamination of waters of the United States or creation of a public health hazard.
 - vii. Maintain complete on-site records documenting implementation of all required additional measures, including the records specified for Operation and Maintenance in Part IV.C, Table IV-A, for a period of at least five years from the date they are created.
 - viii. CAFOs constructing new wastewater retention facilities or modifying existing retention facilities shall insure that all retention structure design and construction will, at a minimum, be in accordance with the technical standards developed by the Natural Resources Conservation Service (NRCS). The permittee must use those standards that are current at the time of construction. Existing retention facilities that have been properly maintained and show no signs of structural breakage will be considered to be properly constructed.

The following minimum design standards are required for construction and/or modification of a retention facility: (a) soils used in the embankment shall be free of foreign material such as trash, brush, and fallen trees; (b) the embankment shall be constructed in lifts or layers no more than 6 inches thick and compacted at optimum moisture content; (c) all embankment walls shall be stabilized to prevent erosion or deterioration; (d) site specific variation in embankment construction shall be in accordance with NRCS design standards.

- ix. A rain gauge shall be kept on site and properly maintained. A log of all measurable rainfall events shall be kept with the NMP.
- x. Open lots and associated wastes shall be isolated, as appropriate, from run-on from outside surface drainage by ditches, dikes, berms, terraces or other such structures designed to carry peak flows expected at times when a 25-year, 24-hour rainfall event occurs. Clean water and flood waters must be diverted, as appropriate, from contact with feedlots and holding pens, and manure and/or process wastewater storage systems. In cases where it is not feasible to divert clean water from the production area, the retention structures shall include adequate storage capacity for the additional clean water. Clean water includes rain falling on the roofs of facilities, runoff from adjacent land, or other sources.
- xi. Facilities shall not expand operations, either in size or numbers of animals, prior to amending or enlarging the waste handling procedures and structures to

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accommodate any additional wastes that will be generated by the expanded operations.

b. Prohibitions

- i. All discharges to retention facilities shall be composed entirely of manure, litter or process wastewater from the proper operation and maintenance of a CAFO, and the precipitation from the animal confinement, storage and handling areas. The disposal of other materials into these retention facilities is prohibited.
- ii. Animals confined at the CAFO shall not be allowed to come into direct contact with waters of the United States. Fences may be used to restrict such access.
- iii. New facilities shall not be built in a water of the United States (including streams, rivers, lakes, wetlands and playa lakes) as defined in 40 CFR 122.2.
- iv. Wastewater containment facilities, manure storage facilities or holding pens may not be located in the 100-year flood plain unless the facility is protected from inundation and damage that may occur during that flood event.
- v. There shall be no water quality impairment to public and neighboring private drinking water wells due to waste handling at the permitted facility. Facility wastewater retention facilities, holding pens or waste/wastewater disposal sites shall not be located closer to public or private water wells than the distances specified by State regulations or health codes, or State issued permits for that facility.
- vi. There shall be no discharge of manure, litter, or process wastewater from retention or control structures to surface waters of the United States through groundwater with a direct hydrologic connection to such waters..
- vii. There shall be no discharge of rainfall runoff from manure or litter storage piles.

3. Water Quality-based Effluent Limitations and Standards - Production Area

EPA has established the following permit conditions to protect water quality standards.

a. Discharges to Water Quality Impaired Waters.

- i. If the CAFO discharges or proposes to discharge to an impaired water with an EPA approved or established TMDL, EPA will inform the facility if any additional limits or controls are necessary for the discharge to be consistent with the assumptions of any available wasteload allocation in the TMDL, or if coverage under an individual permit is necessary in accordance with Part I.D.1. Any additional limits or controls shall be included in the NMP.
- ii. If the CAFO discharges or proposes to discharge to an impaired water without an EPA approved or established TMDL, EPA will inform the facility if any additional limits or controls are necessary to meet water quality standards, or if coverage under an individual permit is necessary in accordance with Part I.D.1. Any additional limits or controls shall be included in the NMP.
- iii. If a CAFO's authorization for coverage under this permit relied on Part I.D.7 for a new discharge to an impaired water, the facility must implement and maintain any

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control measures or conditions on its site that enabled the CAFO to become eligible under Part I.D.7., and shall include these control measures or conditions in its NMP.

- iv. If at any time the facility becomes aware, or EPA determines, that a discharge to an impaired water has occurred or is proposed to occur and the requirements of Part II.A.3.a.i-iii have not been addressed, the facility must take corrective action to fulfill the requirements of Part II.A.3.a.i-iii. Any changes to the NMP required to fulfill the requirements of Part II.A.3.a.i-iii shall be done in accordance with Part III.A.6.

b. Tier 2 Antidegradation Requirements for New or Increased Dischargers

If the CAFO discharges or proposes to discharge directly to waters designated by a State or Tribe as Tier 2 or Tier 2.5 for antidegradation purposes under 40 CFR 131.12(a) (see list of Tier 2 and 2.5 waters on EPA's website at <http://www.epa.gov/npdes/stormwater/msgp>), EPA may notify the facility that additional analyses, control measures, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or notify you that an individual permit application is necessary in accordance with Part I.D.7. Any such additional requirements shall be included in the NMP.

4. Technology-based Effluent Limitations and Standards - Land Application Areas under the Control of the CAFO Owner/Operator.

For CAFOs where manure, litter, or process wastewater is applied to land under the control of the CAFO owner/operator, the NMP required by Part III of this permit must include the following requirements:

- a. Nutrient transport potential. The NMP must incorporate elements in paragraphs c – h below based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field.
- b. Form, source, amount, timing, and method of application. The NMP must address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters.
- c. Determination of application rates. Application rates for manure, litter, or process wastewater must minimize phosphorus and nitrogen transport from the field to surface waters in compliance with the most current New Mexico NRCS Conservation Practice Standard Code 590 (Nutrient Management).(see Appendix D)
- d. Site specific conservation practices. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States.
- e. Protocols to land apply manure, litter or process wastewater. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater.

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- f. Manure and soil sampling. Manure must be analyzed at least once annually for nitrogen and phosphorus content. Soil must be analyzed at least once every five years. The results of these analyses must be used in determining application rates for manure, litter, and process wastewater;
- g. Inspection of land application equipment for leaks. Equipment used for land application of manure, litter, or process wastewater must be inspected periodically for leaks;
- h. Land application setback requirements. Manure, litter, or process wastewater must not be applied closer than one-hundred (100) feet to any down-gradient water of the United States, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to waters of the United States. The permittee may elect to use a 35-foot vegetated buffer where applications of manure, litter, or process wastewater are prohibited as an alternative to the 100-foot setback to meet this requirement. As a compliance alternative, the permittee may demonstrate that a set-back or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot setback.
- i. Complete on-site records including the site specific NMP must be maintained to document implementation of all required land application practices. Such documentation must include the records specified for Soil and Manure/Wastewater Nutrient Analyses and Land Application in Part IV.C, Table IV-A.

5. Other Limitations for Land Application under the Control of the CAFO Owner/Operator

- a. Additional BMPs to control discharges from land application areas.
 - i. Areas shall be identified that, due to topography, activities or other factors, have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to waters of the United States, measures used to limit erosion and pollutant runoff shall be identified.
 - ii. Irrigation Control: Irrigation systems shall be managed so as to minimize (a) ponding or puddling of wastewater on land application fields, (b) contamination of ground and surface water and (c) the occurrence of nuisance conditions such as odors and flies.
- b. Prohibitions.
 - i. There shall be no discharge of manure, litter, or process wastewater to a water of the United States from a CAFO as a result of the application of manure, litter or process wastewater to land areas under the control of the CAFO, except where it is an agricultural storm water discharge. Where manure, litter, or process wastewater has been applied in accordance with the CAFO's site specific NMP, a precipitation related discharge of manure, litter or process wastewater from land areas under the control of the CAFO is considered to be an agricultural storm water discharge.

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- ii. Waste shall not be applied to land when the ground is frozen, saturated with water, or during rainfall events.
 - c. Water Quality-Based Effluent Limitations. There shall be no unauthorized dry weather discharges from land application sites.
6. Other Limitations
- a. Process wastewater discharges from outside the production area, including: washdown of equipment that has been in contact with manure, raw materials, products or byproducts that occurs outside of the production area; runoff of pollutants from raw materials, products or byproducts (such as manure, feathers, litter, bedding and feed) from the CAFO that have been spilled or otherwise deposited outside the production area that have the potential to contribute pollutants to waters of the United States shall be identified in the NMP. The NMP shall identify measures necessary to meet applicable water quality standards.
 - b. Discharges that do not meet the definition of process wastewater, including: discharges associated with feed, fuel, chemical, or oil spills, equipment repair, and equipment cleaning where the equipment has not been in contact with manure, raw materials, products or byproducts; domestic wastewater discharges and have potential to contribute pollutants to waters of the United States shall be identified in the NMP. The NMP shall identify measures necessary to meet applicable water quality standards.
 - c.. Storm water discharges that are not addressed under the effluent limitations in Part II above remain subject to applicable industrial or construction storm water discharge requirements.

In addition to meeting the above effluent limitations (Part II.A), the permittee must comply with the special conditions established in Part III of this permit.

B. Other Legal Requirements

No condition of this permit shall release the permittee from any responsibility or requirements under other statutes or regulations, Federal, State/Indian Tribe or Local.

PART III. SPECIAL CONDITIONS

A. Requirements for Developing and Implementing Nutrient Management Plans (NMPs)

The permittee shall develop, submit, and implement a site specific NMP. The NMP shall specifically identify and describe practices that will be implemented to assure compliance with the effluent limitations and special conditions of this permit (Parts II.A and III.A). The NMP must be developed in accordance with the New Mexico NRCS Conservation Practice Standard Code 590 (Nutrient Management) (see Part II.A and Appendix D).

1. Schedule. The completed NMP must be submitted to EPA along with the notice of intent for CAFOs seeking coverage under this permit. The permittee shall implement its NMP as soon as possible and modify as necessary upon authorization under this permit in accordance with 40 CFR 122.23(h).

2. NMP Review and Terms.
 - a. Upon receipt of the NMP, EPA will review the NMP. If additional information is necessary to complete the NMP, or to clarify, modify, or supplement previously submitted material, the Director may request such information from the CAFO owner or operator.

 - b. The NMP will be used by the Director to identify site specific permit terms, to include the items outlined in Part III.A.3, to be incorporated into this permit. The Director will identify site specific permit terms with respect to protocols for the land application of manure, litter, and process wastewater. The Director will also identify site specific permit terms with respect to manure, litter, and process wastewater storage capacities and site specific conservation practices based on the CAFO's NMP to the extent that such terms are necessary to support the application rates expressed in the NMP.

 - c. When the Director determines that the NMP and notice of intent are complete, the Director will publish the notice of intent submitted by the CAFO, including the CAFO's NMP, and the terms of the NMP to be incorporated into the permit, as determined by the Director, at the EPA Region 6, Water Quality Protection Division internet site (<http://www.epa.gov/earth1r6/6wq/6wq.htm>). The Director will notice the proposal to grant coverage under the permit and the availability of the aforementioned documentation for public review and comment. The notice will also provide the opportunity for a public hearing on the NOI and draft NMP in accordance with 40 CFR 124.11 and 12.

 - d. The period of time for the public to comment and request a hearing on the proposed terms of the NMP to be incorporated into the permit shall be thirty (30) days.

 - e. The Director will respond to comments received during the comment period, as provided in 40 CFR 124.17, and, if necessary, require the CAFO owner or operator to revise the NMP in order to be granted permit coverage.

 - f. When the Director authorizes the CAFO owner or operator to discharge under the general

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permit, the terms of the NMP shall be incorporated as terms and conditions of the permit for the CAFO. The Director will notify the CAFO owner or operator that coverage has been authorized and of the applicable terms and conditions of the permit. Notice of permit coverage and site specific permit terms will be provided to the permittee in a written permit authorization notice.

- g. Each CAFO covered by this permit must comply with the site specific permit terms established by the Director based on the CAFO's site specific NMP.
3. NMP Content. The site specific NMP at a minimum must include practices and procedures necessary to implement the applicable effluent limitations and standards. In addition, the NMP and each CAFO covered by this permit must, as applicable:
- a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities. All wastewater and manure containment structures shall at a minimum be designed, constructed, operated, and maintained in accordance with the standards of the *Natural Resources Conservation Service, Field Office Technical Guide*. Storage capacity must be sufficient to meet the minimum requirements of Part II.A.1, as stated above, and also must be sufficient to allow the CAFO to comply with the land application schedule specified in the NMP. To the extent that the NMP depends on off-site transport or other means of handling to ensure adequate storage capacity this must be described in the NMP.

If the CAFO needs to maintain storage capacity that exceeds the minimum capacity requirements of Part II.A.1, as stated above, to comply with the land application provisions of the NMP or Part II.A., the storage capacity shall become a term of this permit and EPA will develop site specific terms based on the submitted NMP.
 - b. Ensure that clean water is diverted, as appropriate, from the production area. Any clean water that is not diverted and comes into contact with raw materials, products, or byproducts including manure, litter, process wastewater, feed, milk, eggs, or bedding is subject to the effluent limitations specified in Part II.A of this permit. Where clean water is not diverted from the production area, the retention structures shall include adequate storage capacity for the additional clean water. Clean water includes, but is not limited to, rain falling on the roofs of facilities and runoff from adjacent land.
 - c. Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals or contaminants. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the management of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner sufficient to prevent pollutants from entering the manure, litter, or process wastewater retention structures or waters of the United States. Include references to any applicable chemical handling protocols and indicate that other protocols included in the NMP will be reviewed.
 - d. Identify appropriate site specific conservation practices to be implemented, including as

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appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States and specifically, to minimize the runoff of nitrogen and phosphorus. Each CAFO covered by this permit must implement the site specific conservation practices determined by the Permitting Authority to be a term of this permit, as specified in the CAFO's permit authorization notice. These practices may include, but are not limited to, residue management, conservation crop rotation, grassed waterways, strip cropping, vegetated buffers, riparian buffers, setbacks, terracing, and diversions. The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant erosion. Where these areas have the potential to contribute pollutants to waters of the United States, the NMP shall identify measures used to limit erosion and pollutant runoff.

- e. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil. Manure, wastewater and soil sampling must be conducted in accordance with the requirements of Parts III.A.7.d and e.
- f. Establish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

The permittee's site specific NMP shall document the calculation of land application rates of manure, litter, or process wastewater. The New Mexico NRCS Conservation Practice Standard 590 (Nutrient Management) shall be used for calculating these rates (see Appendix D). The rate calculation shall address the form, source, amount, timing, and method of application on each field to achieve realistic production goals while minimizing nitrogen and phosphorus movement to surface water. The rate calculation shall be based on the results of a field specific assessment of the potential for nitrogen and phosphorus transport from the field to surface waters using the assessment tools and procedures described in New Mexico NRCS Conservation Practice Standard 590 (Nutrient Management), including the New Mexico Phosphorus Index (New Mexico NRCS Agronomy Technical Note 57).

The permittee shall comply with site specific permit terms established by the Director for land application of manure, litter, and process wastewater. Development of site specific terms shall be based upon the Director's review of the NMP submitted in accordance with the requirements of parts I.E and III.A of this permit. The NMP must also include any additional information necessary to assess the adequacy of the application rates included in the NMP.

- g. Application rates shall be expressed in the NMP consistent with one of the following two approaches.
 - i. Linear Approach
 - (A) The Linear Approach expresses rates of application as pounds of nitrogen and phosphorus. Permittees selecting the linear approach to address rates of application must include in the NMP submitted to the Director the

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following information for each crop, field, and year covered by the NMP, which will be used by the Director to establish site specific permit terms:

- (1) The maximum application rate (pounds/acre/year of nitrogen and phosphorus) from manure, litter, and process wastewater;
 - (2) The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field. The potential for nitrogen and phosphorus transport shall be determined using the assessment tools and procedures described in New Mexico NRCS Conservation Practice Standard 590 (Nutrient Management) including the New Mexico Phosphorus Index (New Mexico NRCS Agronomy Technical Note 57). The CAFO must specify any conservation practices used in calculating the risk rating;
 - (3) The crops to be planted or any other uses of a field such as pasture or fallow fields;
 - (4) The realistic annual yield goal for each crop or use identified for each field;
 - (5) The nitrogen and phosphorus recommendations from EPA approved sources for each crop or use identified for each field;
 - (6) Credits for all residual nitrogen in each field that will be plant-available;
 - (7) Consideration of multi-year phosphorus application. For any field where nutrients are applied at a rate based on the crop phosphorus requirement, the NMP must account for single-year nutrient applications that supply more than the crop's annual phosphorus requirement;
 - (8) Accounting for all other additions of plant available nitrogen and phosphorus (i.e., from sources other than manure, litter, or process wastewater or credits for residual nitrogen);
 - (9) The form and source of manure, litter, and process wastewater to be land-applied;
 - (10) The timing and method of land application. The NMP also must include storage capacities needed to ensure adequate storage that accommodates the timing indicated;
 - (11) The methodology that will be used to account for the amount of nitrogen and phosphorus in the manure, litter, and wastewater to be applied; and
 - (12) Any other factors necessary to determine the maximum application rate identified in accordance with the Linear Approach.
- (B) Large CAFOs using the Linear Approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests of nitrogen and phosphorus. Such representative tests must be taken within twelve (12) months of the

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date of land application.

ii. Narrative Rate Approach

- (A) The Narrative Rate Approach expresses a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied. Permittees selecting the narrative rate approach to address rates of application must include in the NMP submitted to the Director the following information for each crop, field, and year covered by the NMP, which will be used by the Director to establish site specific permit terms:
- (1) The maximum amounts of nitrogen and phosphorus that will be derived from all sources of nutrients (pounds/acre for each crop and field);
 - (2) The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field. The potential for nitrogen and phosphorus transport shall be determined using the assessment tools and procedures described in New Mexico NRCS Conservation Practice Standard 590 (Nutrient Management) including the New Mexico Phosphorus Index (New Mexico NRCS Agronomy Technical Note 57). The CAFO must specify any conservation practices used in calculating the risk rating;
 - (3) The crops to be planted in each field or any other uses of a field such as pasture or fallow fields, including alternative crops if applicable. Any alternative crops included in the NMP must be listed by field, in addition to the crops identified in the planned crop rotation for that field;
 - (4) The realistic annual yield goal for each crop or use identified for each field for each year, including any alternative crops identified;
 - (5) The nitrogen and phosphorus recommendations from EPA approved sources for each crop or use identified for each field, including any alternative crops identified;
 - (6) The methodology (including formulas, sources of data, protocols for making determination, etc.) and actual data that will be used to account for: (a) the results of soil tests required by Parts II.A.4.f and III.A.3.e, (b) credits for all nitrogen in the field that will be plant-available, (c) the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied, (d) consideration of multi-year phosphorus application (for any field where nutrients are applied at a rate based on the crop phosphorus requirement, the methodology must account for single-year nutrient applications that supply more than the crop's annual phosphorus requirement), (e) accounting for all other additions of

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plant available nitrogen and phosphorus to the field (i.e., from sources other than manure, litter, or process wastewater or credits for residual nitrogen), (f) the timing and method of land application, and (g) volatilization of nitrogen and mineralization of organic nitrogen.

- (7) Any other factors necessary to determine the amounts of nitrogen and phosphorus to be applied in accordance with the Narrative Rate Approach.

- (B) NMPs using the Narrative Rate Approach must also include the following projections, which will not be used by the Director in establishing site specific permit terms:

- (1) Planned crop rotations for each field for the period of permit coverage;
- (2) Projected amount of manure, litter, or process wastewater to be applied;
- (3) Projected credits for all nitrogen in the field that will be plant-available;
- (4) Consideration of multi-year phosphorus application;
- (5) Accounting for other additions of plant-available nitrogen and phosphorus to the field; and
- (6) The predicted form, source, and method of application of manure, litter, and process wastewater for each crop.

- iii. Identify and maintain all records necessary to document the development and implementation of the NMP and compliance with the permit.

- h. Include a legible site map of the production area (including, at a minimum, the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment area), and the land application area. The map must also include flow direction, an outline of drainage areas to the process wastewater retention or control structures, structural controls, and surface water bodies.
4. Signature. The NMP shall be signed by the owner/operator or other signatory authority in accordance with Part VI.E (Signatory Requirements) of this permit.
5. A current copy of the NMP shall be kept on site at the permitted facility in accordance with Part IV.C of this permit and provided to the Permitting Authority upon request.
6. Changes to the nutrient management plan
- a. When a CAFO owner or operator covered by this permit makes changes to the CAFO's NMP previously submitted to the Director, the CAFO owner or operator must provide the Director with the most current version of the CAFO's NMP and identify changes from the previous version, with the exception of annual calculations of application rates for manure, litter, and process wastewater as required in Parts III.A.3.g.i(B) (for the Linear Approach)

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and III.A.3.g.ii(C) (for the Narrative Rate Approach), which are not required to be submitted to the Director.

- b. When changes to a NMP are submitted to the Director, the Director will review the revised NMP to ensure that it meets the requirements of Parts II.A.4 and III.A.3. If the Director determines that the changes to the NMP necessitate revision to the terms of the NMP incorporated into the permit issued to the CAFO, the Director must determine whether such changes are substantial. Substantial changes to the terms of a NMP incorporated as terms and conditions of a permit include, but are not limited to:
 - i. Addition of new land application areas not previously included in the CAFO's NMP, except that if the added land application area is covered by the terms of a NMP incorporated into an existing NPDES permit and the permittee complies with such terms when applying manure, litter, and process wastewater to the added land;
 - ii. For NMPs using the Linear Approach, changes to the field-specific maximum annual rates of land application (pounds of N and P from manure, litter, and process wastewater). For NMPs using the Narrative Rate Approach, changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop;
 - iii. Addition of any crop or other uses not included in the terms of the CAFO's NMP; and
 - iv. Changes to site specific components of the CAFO's NMP, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the United States
 - c. If the Director determines that the changes to the terms of the NMP are not substantial, the Director will include the revised NMP in the permit record, revise the terms of the permit based on the site specific NMP, and notify the permittee and the public of any changes to the terms of the permit based on revisions to the NMP.
 - d. If the Director determines that the changes to the terms of the NMP are substantial, the Director will notify the public, make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment, and respond to all significant comments received during the comment period. The public notice will be provided using the guidelines described in Part III.A.2.c above. The Director may require the permittee to further revise the NMP, if necessary. Once the Director incorporates the revised terms of the NMP into the permit, the Director will notify the permittee of the revised terms and conditions of the permit.
7. Requirements for implementing nutrient management plans
- a. Permittee must have adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities.
 - b. Clean water must be diverted, as appropriate from the production area.
 - c. Chemicals and other contaminants handled on-site may not be disposed of in any manure,

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litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants.

- d. Manure, Litter, and Process Wastewater Testing. Representative samples of manure, litter, and process wastewater shall be collected and analyzed for nutrient content, including nitrogen and phosphorus, at least annually, in accordance with the protocols established in the NMP under Part III.A.3.e. At a minimum, manure sampling and analysis shall be conducted prior to the first land application event each year of permit coverage. Steps must be taken to ensure the collection of a representative sample. The sample shall be sent for analysis as soon after collection as practical and, where necessary, specific preservation procedures shall be utilized to prevent the degradation of the sample.
- e. Soil Testing. Representative samples of soil for all fields under the control of the CAFO operator where manure and wastewater may be applied must be collected and analyzed for phosphorus content at least once every five (5) years, in accordance with the protocols established in the NMP under Part III.A.3.e. Representative samples shall be collected from each field included in the NMP. Each sample area should consist of only one general soil type or condition. If a field varies in slope, color, drainage or texture, and if those areas can be fertilized separately, collect and analyze a separate sample for each area. Samples shall be collected according to New Mexico NRCS, NMED, or New Mexico State University Extension guidance. Avoid sampling in old fence rows, dead furrows, low spots, feeding areas, and other areas that might not provide representative results. Soil samples shall not be taken when the soil is wet or frozen or shortly after applying lime or fertilizer. Collect at least 10 soil cores for small areas and up to thirty (30) cores for larger fields. Take the soil cores randomly throughout the sampling area and combine the cores into a single sample. An individual sample should represent no more than twenty (20) acres except when soils, past management, and cropping history are uniform.

In all cases the sampling frequency for manure, litter, process wastewater and soil shall be consistent with the New Mexico NRCS Conservation Practice Standard Code 590 (Nutrient Management).

- f. CAFOs that use the Narrative Rate Approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology specified in the NMP pursuant to Part III.A.3.g.ii(A) before land applying manure, litter, and process wastewater. Such calculations must rely on the following data:
 - i. A field-specific determination of soil levels of nitrogen and phosphorus. For nitrogen, the determination must include a concurrent determination of nitrogen that will be plant available. For phosphorus, the determination must include the results of the most recent soil test conducted as required in Parts II.A.4.d and III.A.3.g.
 - ii. The results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, as required in Parts II.A.4.d and III.A.3.g, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.
8. Certified Specialists to Develop NMPs. Owners and operators of CAFO facilities located in the

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State of New Mexico (except Indian Country) shall use a “Certified Conservation Planner – CNMP” and a “Certified Specialist(s) – CNMP” to develop and/or modify the NMP required by this permit. The NMP must also include applicable document(s) to verify that the person who developed and/or modified the NMP had met the qualifications of a certified planner/specialist.

A certified NMP planner is a person who has a demonstrated capacity to develop Comprehensive Nutrient Management Plans (CNMPs) in accordance with applicable USDA-NRCS and State standards which, when an NPDES Permit is required, also meets the NMP requirement, the EPA CAFO effluent guidelines and NPDES permit requirements. The certified NMP planner must be certified by New Mexico USDA-NRCS or a USDA-NRCS sanctioned organization as a “Certified Specialist-CNMP,” or an alternate, equivalent certification program developed by NMED. The certified NMP specialist must be certified by New Mexico USDA-NRCS or a USDA-NRCS sanctioned organization as a “Certified Specialist – CNMP,” or an alternate, equivalent certification program developed by NMED.

CAFO owners/operators are solely responsible for assuring their NMPs comply with all permit conditions and are properly implemented.

B. Facility Closure Requirements

The following conditions shall apply to the closure of lagoons and other earthen or synthetic lined basins and other manure, litter, or process wastewater storage and handling structures:

1. Closure of Lagoons and Other Surface Impoundments
 - a. No lagoon or other earthen or synthetic lined basin shall be permanently abandoned.
 - b. Lagoons and other earthen or synthetic lined basins shall be maintained at all times until closed in compliance with this section.
 - c. All lagoons and other earthen or synthetic lined basins must be properly closed if the permittee ceases operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of twelve (12) consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either: (1) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or (2) removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. In either case, the permittee shall submit a written report to EPA within thirty (30) days of basin closure detailing the actions taken, and shall conduct routine inspections, maintenance, and record keeping as though the structure were in use. Prior to restoration of use of the structure, the permittee shall notify EPA in writing and provide the opportunity for inspection.
 - d. All closure of lagoons and other earthen or synthetic lined basins must be consistent with New Mexico NRCS Conservation Practice Standard Code 360 (Closure of Waste Impoundments). Consistent with this standard the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittee’s nutrient management plan, unless otherwise authorized by EPA.
 - e. Unless otherwise authorized by EPA, completion of closure for lagoons and other earthen or synthetic lined basins shall occur as promptly as practicable after the permittee ceases to operate or, if the permittee has not ceased operations, twelve (12) months from the date

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on which the use of the structure ceased, unless the lagoons or basins are being maintained for possible future use in accordance with the requirements above.

2. Closure Procedures for Other Manure, Litter, or Process Wastewater Storage and Handling Structure

No other manure, litter, or process wastewater storage and handling structure shall be abandoned. Closure of all such structures shall occur as promptly as practicable after the permittee has ceased to operate, or, if the permittee has not ceased to operate, within twelve (12) months after the date on which the use of the structure ceased. To close a manure, litter, or process wastewater storage and handling structure, the permittee shall remove all manure, litter, or process wastewater and dispose of it in accordance with the permittee's nutrient management plan, or document its transfer from the permitted facility in accordance with off-site transfer requirements specified in Part III.C below, unless otherwise authorized by EPA.

C. Requirements for the Transfer of Manure, Litter, and Process Wastewater to Other Persons

1. In cases where CAFO-generated manure, litter, or process wastewater is sold or given away the permittee must comply with the following conditions (amounts less than 10 tons per year to a single recipient need not be recorded):
 - a. Maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted operation;
 - b. Record the name and address of the recipient;
 - c. Provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater; and
 - d. These records must be retained on-site, for a period of five (5) years, and be submitted to the Permitting Authority upon request.

D. Additional Special Requirements

1. Liner Requirement: The permittee shall document that no direct hydrologic connection exists between the contained wastewater and surface waters of the United States. Where the permittee cannot document that no direct hydrologic connection through ground water exists, the ponds, lagoons and basins of the containment facilities must have a liner which will prevent the potential contamination of surface waters.
 - a. Documentation of no direct hydrologic connection. The permittee can document lack of hydrologic connection by either: (1) documenting that there will be no significant leakage from the retention structure; or (2) documenting that any leakage from the retention structure would not migrate to surface waters. For documentation of no significant leakage, in-situ materials must, at a minimum, meet the minimum criteria for hydraulic conductivity and thickness described in 4.b, below. Documentation that leakage will not migrate to a surface water must include maps showing ground water flow paths, or that the leakage enters a confined environment. This documentation must be certified in writing by a NRCS engineer or a Professional Engineer and must include information on the hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the wetted perimeter.

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- b. **Liner Construction.** Liners constructed and maintained in accordance with NRCS design specifications shall be considered to prevent hydrologic connection which could result in the contamination of surface waters. Where no site-specific assessment has been done by a NRCS engineer or Professional Engineer, the liner shall be constructed to have hydraulic conductivities no greater than 1×10^{-7} cm/sec, with a thickness of 1.5 feet or greater or its equivalency in other materials.
 - c. **Liner Maintenance.** The permittee must maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from animals by fences or other protective devices. No tree shall be allowed to grow such that the root zone would intrude or compromise the structure of the liner. Any mechanical or structural damage to the liner must be evaluated by a NRCS Engineer or Professional Engineer within thirty (30) days of the damage. Documentation of liner maintenance shall be kept with the Nutrient Management Plan (NMP). The permittee shall have a NRCS Engineer or Professional Engineer review the documentation and do a site evaluation a minimum of once every five (5) years. If notified by the State or EPA that a direct hydrological connection to waters of the United States exists for the contamination of surface waters or drinking water, the permittee shall install a leak detection system or monitoring wells, or take other appropriate measures in accordance with that notice. Documentation of compliance with the notification must be kept with the NMP, as well as all sampling data. Data from the monitoring wells must be kept on site for three (3) years with the NMP. The first year's sampling shall be considered the baseline data and must be retained on site for the life of the facility.
2. **Retention Structure Dewatering:** A schedule must be developed for liquid waste removal from the retention structure(s). A date log indicating weekly inspection of wastewater level in the retention facility, including specific measurement of wastewater level must be kept. Retention facilities shall be equipped with either irrigation or evaporation or liquid removal systems capable of dewatering the retention facilities. Operators using pits, ponds, or lagoons for storage and treatment of storm water, manure and process generated wastewater, including flush water waste handling systems, shall maintain sufficient available storage capacity to contain the runoff and the direct precipitation from a 25-year, 24-hour rainfall event. The operator shall restore the storage capacity as soon as possible after any rainfall event or accumulation of wastes reduces such storage capacity, weather permitting.
3. **Spills:** Appropriate measures necessary to prevent spills and to cleanup spills of any toxic and other pollutants shall be taken. Handling procedures and storage for these materials must be specified in the NMP. Procedures for cleaning up spills shall be identified, and the necessary equipment to implement clean up shall be made available to facility personnel. All spills and clean-up activities must be documented. Documentation of spills and clean-up must be kept with the NMP.
4. **Solids, sludges, manure or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner to prevent pollutants from being discharged to waters of the United States.**
5. **Manure, litter, and process wastewater handling, treatment, and management shall not result in the**

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destruction or adverse modification of the critical habitat of endangered or threatened species, or contribute to the taking of endangered or threatened species of plant, fish or wildlife. The operator shall notify State and Federal wildlife agencies, NMED, and EPA within 48 hours if any dead or injured threatened or endangered species or protected migratory birds are observed in or on receiving waters following a discharge or on the facility's land application areas at any time.

6. Manure, litter, and process wastewater handling, treatment, and management shall not create an environmental or public health hazard; shall not result in the contamination of drinking water; shall conform to State guidelines and/or regulations for the protection of surface water quality.
7. Employee Training: Employees responsible for permit compliance must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and waste disposal. Training shall include topics such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary record-keeping requirements, and spill response and clean up. The permittee is responsible for determining the appropriate training frequency for different levels of personnel and the NMP shall identify periodic dates for such training.
8. Endangered Species
 - a. All CAFO operations in the counties of Bernalillo, Chavez, Eddy, Sandoval, San Juan and Valencia must develop and implement an Emergency Action Plan (EAP). The EAP must identify the BMP(s) that shall be implemented immediately to minimize the likelihood of an accident, leak, spill or permitted discharge from entering waters of the United States occupied by threatened or endangered species or their critical habitat. The EAP must be included as an element of the NMP submitted to EPA for review. BMPs developed and implemented must comply with state laws. BMP(s) to reach this goal may include, but are not limited to:
 - i. an emergency runoff discharge abatement area;
 - ii. a storage lagoon or other lined storage area with additional capacity;
 - iii. a contingency plan to immediately pump out and create additional storage (avoiding land application where pumped material runoff would reach receiving stream);
 - iv. implementation of a CNMP according to the USDA Natural Resources Conservation Service guidelines;
 - v. additional constructed wetland or other adequate waste treatment units; or
 - vi. other watershed practices that are capable of reducing discharges from reaching waters of the United States that are occupied by threatened or endangered species (e.g., facility setbacks, berms, filter strips, emergency response barriers, etc.).
 - b. All CAFO operations in the counties of Bernalillo, Chavez, Eddy, Sandoval, San Juan and Valencia must develop and implement soil sampling of land application sites once every five (5) years for the metals selenium, copper and zinc. The sampling may be performed concurrently with required phosphorus sampling.

PART IV. DISCHARGE MONITORING AND NOTIFICATION REQUIREMENTS**A. Notification of Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport and Application**

If, for any reason, there is a discharge of pollutants to a water of the United States, the permittee is required to make immediate oral notification within 24-hours to EPA Region 6, Compliance and Assurance Division, Water Enforcement Branch (6EN-W), Dallas, Texas at 214-665-6595, and NMED at 505-827-9329. The permittee is also required to notify EPA and NMED in writing within fourteen (14) working days of the discharge of pollutants to a water of the United States from the facility. In addition, the permittee shall keep a copy of the notification submitted to EPA together with the other records required by this permit. The discharge notification shall include the following information:

- a. A description of the discharge and its cause, including a description of the flow path to the receiving water body and an estimate of the flow and volume discharged.
- b. The period of non-compliance, including exact dates and times, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent recurrence of the discharge.

B. Monitoring Requirements for All Discharges from Retention Structures

In the event of any overflow or other discharge of pollutants from a manure and/or wastewater storage or retention structure, whether or not authorized by this permit, the following actions shall be taken:

1. All discharges shall be sampled and analyzed. Samples must, at a minimum, be analyzed for the following parameters: total nitrogen, nitrate nitrogen, ammonia nitrogen, total phosphorus, *E. coli* bacteria, five-day biochemical oxygen demand (BOD₅), total suspended solids, pH, and temperature. The discharge must be analyzed in accordance with approved EPA methods for water analysis listed in 40 CFR Part 136.
2. Record an estimate of the volume of the release and the date and time.
3. Samples shall consist of grab samples collected from the over-flow or discharges from the retention structure. A minimum of one sample shall be collected from the initial discharge (within 30 minutes). The sample shall be collected and analyzed in accordance with EPA approved methods for water analysis listed in 40 CFR 136. Samples collected shall be representative of the monitored discharge.
4. If conditions are not safe for sampling, the permittee must provide documentation of why samples could not be collected and analyzed. For example, the permittee may be unable to collect samples during dangerous weather conditions (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). However, once dangerous conditions have passed, the permittee shall collect a sample from the retention structure (pond or lagoon) from which the discharge occurred.
5. Monitoring results must be submitted to EPA Region 6, Compliance Assurance and Enforcement Division, within thirty (30) days of the discharge event at the address listed in Part V.1 of this permit.

C. General Inspection, Monitoring, and Record keeping Requirements

The permittee shall inspect, monitor, and record the results of such inspection and monitoring in accordance with Table IV–A:

Table IV-A NPDES Large CAFO Permit Record Keeping Requirements		
Parameter	Units	Frequency
Permit and Nutrient Management Plan <i>(Note: Required by the NPDES CAFO Regulation – applicable to all CAFOs)</i>		
The CAFO must maintain on-site a copy of the current NPDES permit, including the permit authorization notice.	N/A	Maintain at all times
The CAFO must maintain on-site a current site specific NMP that reflects existing operational characteristics. The operation must also maintain on-site all necessary records to document that the NMP is being properly implemented with respect to manure and wastewater generation, storage and handling, and land application, and all other minimum practices described in 40 CFR 122.42(e).	N/A	Maintain at all times
Soil and Manure/Wastewater Nutrient Analysis <i>(Note: Required by the CAFO ELG – applicable to Large CAFOs)</i>		
Analysis of manure, litter, and process wastewater to determine nitrogen and phosphorus content. ¹	ppm Pounds/ton	At least annually after initial sampling
Analysis of soil in all fields where land application activities are conducted to determine phosphorus content. ¹	ppm	At least once every 5 years after initial sampling
Operation and Maintenance <i>(Note: Required by the CAFO ELG – applicable to Large CAFOs)</i>		
Visual inspection of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to wastewater and manure storage and containment structure.	N/A	Weekly
Visual inspection of all water lines	N/A	Daily ²
Visual inspection of the manure, litter, and process wastewater impoundments, including documentation of depth of manure and process wastewater in all liquid impoundments	Feet	Weekly
Documentation of all corrective actions taken. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction.	N/A	As necessary
Documentation of animal mortality handling practices	N/A	As necessary
Design documentation for all manure, litter, and wastewater storage structures including the following information:		

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<ul style="list-style-type: none"> • Volume for solids accumulation • Design treatment volume • Total design storage volume³ • Days of storage capacity 	<p>Cubic yards/gallons Cubic yards/gallons Cubic yards/gallons Days</p>	<p>Once in the permit term unless revised</p>
<p>Documentation of all overflows from all manure and wastewater storage structures including: <i>(Note: Required by the NPDES Regulation – applicable to all CAFOs)</i></p>		
<ul style="list-style-type: none"> • Date and time of overflow • Estimated volume of overflow • Analysis of overflow (as required by the Permitting Authority) 	<p>Month/day/year Total gallons ppm</p>	<p>Per event Per event Per event</p>
<p>Land Application <i>(Note: Required by the CAFO ELG – applicable to Large CAFOs)</i></p>		
<p>For each application event where manure, litter, or process wastewater is applied, documentation of the following by field:</p>		
<ul style="list-style-type: none"> • Date of application • Method of application • Weather conditions at the time of application and for 24 hours prior to and following application • Total amount of nitrogen and phosphorus applied⁴ 	<p>Month/day/year N/A N/A Pounds/acre</p>	<p>Daily Daily Daily Daily</p>
Documentation of the crop and expected yield for each field	Bushel/acre	Seasonally
Documentation of the actual crop planted and actual yield for each field		
Documentation of test methods and sampling protocols used to sample and analyze manure, litter, and wastewater and soil.	N/A	Once in the permit term unless revised
Documentation of the basis for the application rates used for each field where manure, litter, or wastewater is applied.	N/A	Once in the permit term unless revised
Documentation showing the total nitrogen and phosphorus to be applied to each field including nutrients from the application of manure, litter, and wastewater and other sources	Pounds/acre	Once in the permit term unless revised
Documentation of manure application equipment inspection	N/A	Seasonally
<p>Manure Transfer <i>(Note: Required by the NPDES CAFO Regulation – applicable to Large CAFOs)</i></p>		
<p>For all manure transfers the CAFO must maintain the following records:</p>		
<ul style="list-style-type: none"> • Date of transfer • Name and address of recipient • Approximate amount of manure, litter, or wastewater transferred 	<p>N/A N/A Tons/gallons</p>	<p>As necessary As necessary As necessary</p>
<p>¹ Refer to the state nutrient management technical standard for the specific analyses to be used. ² Visual inspections should take place daily during the course of normal operations. The completion of such inspection should be documented in a manner appropriate to the operation. Some operations may wish to maintain a daily log. Other operations may choose to make a weekly entry, when they update other weekly records, that required daily inspections have been completed. ³ Total design volume includes normal precipitation less evaporation on the surface of the structure for the storage period, normal runoff from the production area for the storage period, 25-year, 24-hour precipitation on the surface of the structure, 25-year, 24-hour runoff from the production area, and residual solids. ⁴ Including quantity/volume of manure, litter, or process wastewater applied and the basis for the rate of phosphorus application.</p>		

PART V. ANNUAL REPORTING REQUIREMENTS

1. The annual report shall be submitted to EPA and NMED at the addresses listed below. The annual report shall be submitted on the 31st day of January.
Addresses for submitting required reports:

EPA Region 6: Compliance Assurance and Enforcement Division
Water Enforcement Branch (6EN-W)
U.S. EPA, Region 6
P.O. Box 50625
Dallas, TX 75250

NMED: Program Manager
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
1190 Saint Francis Drive
Santa Fe, NM 87502

2. The annual report must include the following information:
 - a. The number and type of animals, whether in open confinement or housed under roof;
 - b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous twelve (12) months (tons/gallons);
 - c. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous twelve (12) months (tons/gallons);
 - d. Total number of acres for land application covered by the NMP;
 - e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous twelve (12) months;
 - f. Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous twelve (12) months, including date, time, and approximate volume; and
 - g. A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner.
 - h. Actual crops planted and actual yields for each field for the preceding twelve (12) months.
 - i. Results of all samples of manure, litter or process wastewater for nitrogen and phosphorus content for manure, litter and process wastewater that was land applied.
 - j. Results of calculations conducted in accordance with Parts III.A.3.g.i(B) (for the Linear Approach) and III.A.3.g.ii (for the Narrative Rate Approach).
 - k. Amount of manure, litter, and process wastewater applied to each field during the preceding twelve (12) months.
 - l. For CAFOs using the Narrative Rate Approach to address rates of application:
 - i. The results of any soil testing for nitrogen and phosphorus conducted during the preceding twelve (12) months.
 - ii. The data used in calculations conducted in accordance with Part III.A.3.h.ii.
 - iii. The amount of any supplemental fertilizer applied during the preceding twelve (12) months.

PART VI. STANDARD PERMIT CONDITIONS

A. General Conditions

1. In accordance with the provisions of 40 CFR Part 122.41, et. seq., this permit incorporates by reference all conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the “Act”) as well as all applicable regulations.
2. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation, and reissuance; for denial of a permit renewal application; and/or for requiring a permittee to apply for and obtain an individual NPDES permit.
3. The permittee shall comply with effluent standards and prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
4. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
5. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State/Tribal or local laws or regulations.
6. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.
7. Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the Permit may subject the Permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.
8. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by Section 510 of the Act.
9. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
10. Bypass
 - a. *Definitions*

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- i. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
 - ii. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
 - b. *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of 10.c. and 10.d. of this section.
 - c. *Notice*
 - i. *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
 - ii. *Unanticipated bypass.* The permittee shall submit notice of unanticipated bypass as required in D.5. of this section (24-hour notice).
 - d. *Prohibitions of bypass.*
 - i. Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (C) The permittee submitted notices as required under paragraph 10.c. of this section
 - ii. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 10.d.(i).
 - e. Any bypass allowed by Part VI.A.10 of this permit must, where practicable, be released to vegetated fields for filtering, or captured in secondary containment to minimize discharges to waters of the United States.
11. Upset
 - a. *Definition.* *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance caused by operational error, improperly designed treatment facilities, lack of preventive maintenance, or careless or improper operation.

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- b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 11.c. of this section are met.
 - c. *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - i. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - ii. The permitted facility was at the time being properly operated; and
 - iii. The permittee submitted notice of the upset as required in paragraph D.5. of this section (24-hour notice).
 - iv. The permittee complied with any remedial measures required under paragraph 14. of this section.
 - c. *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.
12. *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit, except where Part I.G of this permit applies.
13. *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action to plead that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
14. *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or prevent any discharge violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
15. *Inspection and entry.* The permittee shall allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law to:
- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 - d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

B. Proper Operation and Maintenance

The permittee shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

C. Monitoring and Records

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least five (5) years from the date of the sample, measurement, report, or application. This period may be extended by request of the Permitting Authority at any time.
3. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
4. The permittee shall follow the following monitoring procedures:
 - a. Any required monitoring must be conducted according to test procedures approved in 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.
 - b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.
 - c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

D. Reporting Requirements

1. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in § 122.29(b); or
 - b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under § 122.42(a)(1).
 - c. The alteration or addition results in a significant change in the permittee's manure use or disposal practices, and such alteration, addition, or change may justify the application of

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permit conditions that are different from or absent in the existing permit., including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to a NMP.

2. The permittee shall give advance notice to EPA of any planned physical alterations or additions or changes in activity which may result in noncompliance with requirements in this permit.
3. This permit is not transferable to any person except after notice to EPA. EPA may require modification or revocation and reissuance of the permit to change the name or the permittee and incorporate such other requirements as may be necessary under the CWA.
4. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.
5. The permittee shall report any noncompliance that may endanger human health or the environment. Any information must be provided orally to within twenty-four (24) hours from the time that the permittee becomes aware of the circumstances to EPA at 214-665-6595. A written submission shall also be provided to EPA within fourteen (14) days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - c. Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
6. The following shall be included as information which must be reported within twenty-four (24) hours:
 - a. Any unanticipated bypass which exceeds any effluent limitation in the permit.
 - b. Any upset which exceeds any effluent limitation in the permit.
 - c. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within twenty-four (24) hours.The Director may waive the written report on a case-by-case basis for reports under the above if the oral report has been received within twenty-four (24) hours.
7. The permittee shall report all instances of noncompliance not reported under above and of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in D.6.
8. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to EPA, it shall promptly submit such facts or information to EPA.

E. Signatory requirements

All applications, reports, or information submitted to EPA shall be signed and certified consistent with 40 CFR §122.22:

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1. All notices of intent shall be signed as follows:
 - a. For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - i. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - ii. The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; or
 - b. For a partnership or sole proprietorship: By a general partner for a partnership or the proprietor, respectively.
2. All reports required by the permit and other information requested by EPA shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above;
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or any individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,
 - c. The written authorization is submitted to EPA.

F. Certification

Any person signing a document under this section shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

G. Availability of Reports

Any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

H. Penalties for Violations of Permit Conditions

1. Criminal Penalties:
 - a. Negligent violations: The Act provides that any person who negligently violates Section 301, 302, 306, 307, 308, 318, or 405 of the Act or any condition or limitation implementing those provisions in a permit issued under Section 402 is subject to a fine of not less than \$2,750 nor more than \$37,500 per day of violation, or by imprisonment for not more than one year, or both.
 - b. Knowing violations: The Act provides that any person who knowingly violates Sections 301, 302, 306, 307, 308, 318, or 405 of the Act or any permit conditions implementing those provisions is subject to a fine of not less than \$5,500 nor more than \$55,000 per day of violation, or by imprisonment for not more than three years, or both.
 - c. Knowing endangerment: The Act provides that any person who knowingly violates Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act or permit conditions implementing those provisions and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than \$275,000, or by imprisonment for not more than 15 years, or both.
 - d. False statements: The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$11,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$22,000 per day of violation, or by imprisonment of not more than four years, or by both. [See Section 309(c)4 of the Clean Water Act]
2. Civil penalties: The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed \$27,500 per day for each violation. [See Section 309(d)]
3. Administrative penalties: The Act provides that the Administrator may assess a Class I or Class II administrative penalty if the Administrator finds that a person has violated Sections 301, 302, 306, 307, 308, 318, or 405 of the Act or a permit condition or limitation implementing these provisions, as follows [See Section 309(g)]:
 - a. Class I penalty: Not to exceed \$11,000 per violation nor shall the maximum amount exceed \$27,500.
 - b. Class II penalty: Not to exceed \$11,000 per day for each day during which the violation continues nor shall the maximum amount exceed \$137,500.

PART VII. DEFINITIONS

Animal feeding operation (AFO) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any 12-month period, and (ii) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Application means the EPA standard national forms for seeking coverage under an NPDES permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in “approved States,” including any approved modifications or revisions [e.g. for NPDES general permits, a written “notice of intent” pursuant to 40 CFR 122.28; for NPDES individual permits, Form 1 and 2B pursuant to 40 CFR 122.1(d)].

Concentrated animal feeding operation (CAFO) means an AFO which is defined as a Large CAFO or Medium CAFO by 40 CFR 122.23(b)(4) and (6), or that is designated as a CAFO.

E. coli means the bacterial count (Parameter 1) at 40 CFR 136.3 in Table 1A, which also cites the approved methods of analysis.

Grab sample means a sample which is taken from a waste stream on a one-time basis without consideration of the flow rate of the waste stream and without consideration of time.

Land application means the application of manure, litter, or process wastewater onto or incorporated into the soil.

Land application area means land under the control of an CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.

Large CAFO means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories: (i) 700 mature dairy cattle, whether milked or dry; (ii) 1,000 veal calves; (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (iv) 2,500 swine each weighing 55 pounds or more; (v) 10,000 swine each weighing less than 55 pounds; (vi) 500 horses; (vii) 10,000 sheep or lambs; (viii) 55,000 turkeys; (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system; (x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system; (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).

Liquid manure handling system means a system that collects and transports or moves waste material with the use of water, such as in washing of pens and flushing of confinement facilities. This would include the use of water impoundments for manure and/or wastewater treatment.

Manure is defined to include manure, litter, bedding, compost and raw materials or other materials commingled with manure or set aside for land application or other use.

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Medium CAFO means any AFO that stables or confines as many or more than the numbers of animals specified in any of the following categories: (i) 200 to 699 mature dairy cattle, whether milked or dry cows; (ii) 300 to 999 veal calves; (iii) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (iv) 750 to 2,499 swine each weighing 55 pounds or more; (v) 3,000 to 9,999 swine each weighing less than 55 pounds; (vi) 150 to 499 horses, (vii) 3,000 to 9,999 sheep or lambs, (viii) 16,500 to 54,999 turkeys, (ix) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system; (x) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (xi) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system; (xii) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or (xiii) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system) **and** either one of the following conditions are met (a) pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (b) pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Notice of Intent (NOI) is a form submitted by the owner/operator applying for coverage under a general permit. It requires the applicant to submit the information necessary for adequate program implementation, including, at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). [(40 CFR §128.28(b)(2)(ii)].

Process wastewater means water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with or is a constituent of raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

Production area means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal containment area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

Small CAFO means an AFO that is designated as a CAFO and is not a Medium CAFO.

Setback means a specified distance from waters of the United States or potential conduits to waters of the United States where manure, litter, and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to: Open tile line intake structures, sinkholes, and agricultural well heads.

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The Act means Federal Water Pollution Control Act as amended, also known as the Clean Water Act as amended, found at 33 USC 1251 et seq.

Vegetated buffer means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching waters of the United States.

APPENDIX A – APPLICATION FORM 2B FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (AND CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES)

EPA ID. NUMBER (copy from Item 1 of Form 1)		
FORM 2B NPDES	EPA	U.S. ENVIRONMENTAL PROTECTION AGENCY APPLICATIONS FOR PERMIT TO DISCHARGE WASTEWATER CONCENTRATED ANIMAL FEEDING OPERATIONS AND AQUATIC ANIMAL PRODUCTION FACILITIES

I. GENERAL INFORMATION Applying for: Individual Permit G Coverage Under General Permit G

A. TYPE OF BUSINESS	B. CONTACT INFORMATION	C. FACILITY OPERATION STATUS
1. Concentrated Animal Feeding Operation (complete items B, C, D, and section II)	Owner/or Operator Name: Telephone: () Address: Facsimile: () City: State: Zip Code:	1. Existing Facility 2. Proposed Facility
2. Concentrated Aquatic Animal Production Facility (complete items B, C, and section III)		

D. FACILITY INFORMATION

Name: _____ Telephone: ()
 Address: _____ Facsimile: ()
 City: _____ State: _____ Zip Code: _____
 County: _____ Latitude: _____ Longitude: _____

If contract operation: Name of Integrator: _____
 Address of Integrator: _____

II. CONCENTRATED ANIMAL FEEDING OPERATION CHARACTERISTICS

A. TYPE AND NUMBER OF ANIMALS	B. Manure, Litter, and/or Wastewater Production and Use
2. ANIMALS	1. How much manure, litter, and wastewater is generated annually by the facility? _____ tons _____ gallons
1. TYPE NO. IN OPEN CONFINEMENT NO. HOUSED UNDER ROOF	2. If land applied how many acres of land under the control of the applicant are available for applying the CAFOs manure/litter/wastewater? _____ acres
" Mature Dairy Cows	3. How many tons of manure or litter, or gallons of waste-water produced by the CAFO will be transferred annually to other persons? _____ tons/gallons (circle one)
" Heifers	
" Calves	
" Cattle (not dairy or veal calves)	

Appendix A

"	Swine (55 lbs. or over)		
"	Swine (under 55 lbs.)		
"	Horses		
"	Sheep or Lambs		
"	Turkeys		
"	Chickens (Broilers)		
"	Chickens (Layers)		
"	Ducks		
"	Other Specify		
3.	TOTAL ANIMALS		

C. TOPOGRAPHIC MAP

D. TYPE OF CONTAINMENT, STORAGE AND CAPACITY

1.	Type of Containment	Total Capacity (in gallons)	
"	Lagoon		
"	Holding Pond		
"	Evaporation Pond		
"	Other: Specify		

2. Report the total number of acres contributing drainage: _____ acres

3.	Type of Storage	Total Number of Days	Total Capacity (gallons/tons)
"	Anaerobic Lagoon		
"	Storage Lagoon		
"	Evaporation Pond		
"	Aboveground Storage Tanks		
"	Belowground Storage Tanks		
"	Roofed Storage Shed		

Appendix A

"	Concrete Pad		
"	Impervious Soil Pad		
"	Other: Specify		

E. NUTRIENT MANAGEMENT PLAN

Note: Effective February 27, 2009, a permit application is not complete until a nutrient management plan is submitted to the Permitting Authority.

1. Please indicate whether a nutrient management plan has been included with this permit application. G Yes G No
2. If no, please explain:

3. Is a nutrient management plan being implemented for the facility? G Yes G No
4. The date of the last review or revision of the nutrient management plan. Date:
5. If not land applying, describe alternative use(s) of manure, litter, and or wastewater:

F. LAND APPLICATION BEST MANAGEMENT PRACTICES

Please check any of the following best management practices that are being implemented at the facility to control runoff and protect water quality:

Buffers Setbacks Conservation tillage Constructed wetlands Infiltration field Grass filter Terrace

III. CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY CHARACTERISTICS

- | | |
|--|--|
| <p>A. For each outfall give the maximum daily flow, maximum 30-day flow, and the long-term average flow.</p> | <p>B. Indicate the total number of ponds, raceways, and similar structures in your facility.</p> |
|--|--|

1. Outfall No.	2. Flow (<i>gallons per day</i>)	1. Ponds	2. Raceways	3. Other
----------------	------------------------------------	----------	-------------	----------

Appendix A

a. Maximum. Daily	b. Maximum 30 Day	c. Long Term Average	C.

Appendix A

		1. Receiving Water	2. Water Source		
<p>D. List the species of fish or aquatic animals held and fed at your facility. For each species, give the total weight produced by your facility per year in pounds of harvestable weight, and also give the maximum weight present at any one time.</p>					
1. Cold Water Species			2. Warm Water Species		
a. Species	b. Harvestable Weight (<i>pounds</i>)		a. Species	b. Harvestable Weight (<i>pounds</i>)	
	(1) Total Yearly	(2) Maximum		(1) Total Yearly	(2) Maximum
<p>E. Report the total pounds of food during the calendar month of maximum feeding.</p>			1. Month	2. Pounds of Food	
IV. CERTIFICATION					
<p><i>I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.</i></p>					
A. Name and Official Title (<i>print or type</i>)			B. Phone No. ()		
C. Signature			D. Date Signed		

Appendix A

INSTRUCTIONS

<p>GENERAL</p> <p>This form must be completed by all applicants who check “yes” to Item II-B in Form I. Not all animal feeding operations or fish farms are required to obtain NPDES permits. Exclusions are based on size and whether or not the facility discharges proposed to discharge. <i>See</i> the description of these exclusions in the CAFO regulations at 40 CFR 122.23.</p> <p>For aquatic animal production facilities, the size cutoffs are based on whether the species are warm water or cold water, on the production weight per year in harvestable pounds, and on the amount of feeding in pounds of food (<i>for cold water species</i>). Also, facilities which discharge less than 30 days per year, or only during periods of excess runoff (<i>for warm water fish</i>) are not required to have a permit.</p> <p>Refer to the Form I instructions to determine where to file this form.</p> <p>Item I-A</p> <p>See the note above to be sure that your facility is a “concentrated animal feeding operation” (CAFO).</p> <p>Item I-B</p> <p>Use this space to give owner/operator contact information.</p> <p>Item I-C</p> <p>Check “proposed” if your facility is not now in operation or is expanding to meet the definition of a CAFO in accordance with the CAFO regulations at 40 CFR 122.23.</p> <p>Item I-D</p> <p>Use this space to give a complete legal description of your facility’s location including name, address, and latitude/longitude. Also, if a contract grower, the name and address of the integrator.</p> <p>Item II</p> <p>Supply all information in item II if you checked (1) in item I-A.</p> <p>Item II-A</p> <p>Give the maximum number of each type of animal in open confinement or housed under roof (either partially or totally) which are held at your facility for a total of 45 days or more in any 12 month period. Provide the total number of animals confined at the facility.</p> <p>Item II-B</p> <p>Provide the total amount of manure, litter, and wastewater generated annually by the facility. Identify if manure, litter, and wastewater generated by the facility is to be land applied and the number of acres, under the control of the CAFO operator, suitable for land application. If the answer to question 3 is yes, provide the estimated annual quantity of manure, litter, and wastewater that the applicant plans to transfer off-site.</p> <p>Item II-C</p> <p>Check this box if you have submitted a topographic map of the entire operation, including the production area and land under the operational control of the CAFO operator where manure, litter, and/or wastewater are applied with Form I.</p>	<p>Item II-D</p> <ol style="list-style-type: none"> 1. Provide information on the type of containment and the capacity of the containment structure (s). 2. The number of acres that are drained and collected in the containment structure (s). 3. Identify the type of storage for the manure, litter, and/or wastewater. Give the capacity of this storage in days. <p>Item II-E</p> <p>Provide information concerning the status of submitting a nutrient management plan for the facility to complete the application. In those cases where the nutrient management plan has not been submitted, provide an explanation. If not land applying, describe the alternative uses of the manure, litter, and wastewater (e.g., composting, pelletizing, energy generation, etc.).</p> <p>Item II-F</p> <p>Check any of the identified conservation practices that are being implemented at the facility to control runoff and protect water quality.</p> <p>Item III</p> <p>Supply all information in Item III if you checked (2) in Item I-A.</p> <p>Item III-A</p> <p>Outfalls should be numbered to correspond with the map submitted in Item XI of Form I. Values given for flow should be representative of your normal operation. The maximum daily flow is the maximum measured flow occurring over a calendar day. The maximum 30-day flow is the average of measured daily flow over the calendar month of highest flow. The long-term average flow is the average of measure daily flows over a calendar year.</p> <p>Item III-B</p> <p>Give the total number of discrete ponds or raceways in your facility. Under “other,” give a descriptive name of any structure which is not a pond or a raceway but which results in discharge to waters of the United States.</p> <p>Item III-C</p> <p>Use names for receiving water and source of water which correspond to the map submitted in Item XI of Form I.</p> <p>Item III-D</p> <p>The names of fish species should be proper, common, or scientific names as given in special Publication No. 6 of the American Fisheries Society. “A List of Common and Scientific Names of Fishes from the United States and Canada.” The values given for total weight produced by your facility per year and the maximum weight present at any one time should be representative of your normal operation.</p> <p>Item III-E</p> <p>The value given for maximum monthly pounds of food should be representative of your normal operation.</p> <p>Item IV</p> <p>The Clean Water Act provides for severe penalties for submitting false information on this application form.</p> <p>Section 309(C)(2) of the Clean Water Act provides that “Any person who knowingly makes any false statement, representation, or certification in any application...shall upon conviction, be punished by a fine of no more than \$10,000 or by imprisonment for not more than six months, or both.”</p>
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Appendix A

	<p>Federal regulations require the certification to be signed as follows:</p> <ul style="list-style-type: none">A. For corporation, by a principal executive officer of at least the level of vice president.B. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; orC. For a municipality, State, federal, or other public facility, by either a principal executive officer or ranking elected official. <p>Paper Reduction Act Notice</p> <p>The public reporting and recordkeeping burden for this collection of information is estimated to average 9.5 hours per response. The public reporting and recordkeeping burden for development of the nutrient management plan to be submitted with the form is estimated to average 46 hours per response. The estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address. Send comments regarding the burden estimate or any other aspect of this collection of information to the Chief, Information Strategies Branch (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for EPA. Please refer to EPA ICR No. 1989.05 for additional information.</p>
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APPENDIX B – NOTICE OF TERMINATION

Notice of Termination (NOT)

NPDES Permit Number: _____

Date NOI was submitted: _____

Name and Address of Facility (include County):

Telephone Number:

Name of Operator:

Reason for the termination of permit coverage:

(Add attached sheets if necessary.)

I certify that I am familiar with the operation of this facility; the facility closure requirements of NM0G10000 have been fulfilled in accordance with Part III.B; and, to the best of my knowledge, the information provided is true, complete, and accurate.

Name (print): _____

Title: _____

Signature:

Signature must be in accordance with Part VI.E of NM0G10000.

Date Signed:

APPENDIX C - HISTORIC PROPERTIES REQUIREMENTS

Coverage under this permit is available only if your CAFO discharges and discharge-related activities meet one of the eligibility criteria below, following the procedures in Appendix C:

Criterion A. Your CAFO discharges do not have the potential to have an effect on historic properties and you are not constructing or installing new control measures on your site that cause subsurface disturbance; or

Criterion B. Your discharge-related activities (i.e., construction and/or installation of control measures that involve subsurface disturbance) will not affect historic properties; or

Criterion C. Your CAFO discharges and discharge-related activities have the potential to have an effect on historic properties; you have consulted with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), or other tribal representative regarding measures to mitigate or prevent any adverse effects on historic properties; and, you have either (1) obtained and are in compliance with a written agreement that outlines all such measures, or (2) been unable to reach agreement on such measures; or

Criterion D. You have contacted the SHPO, THPO, or other tribal representative and EPA in writing informing them that you have the potential to have an effect on historic properties and you did not receive a response from the SHPO, THPO, or tribal representative within 30 days of receiving your letter.

If you have been unable to reach agreement with a SHPO, THPO, or other tribal representative regarding appropriate measures to mitigate or prevent adverse effects, EPA may notify you of additional measures you must implement to be eligible for coverage under this permit.

CAFO operators must determine whether their permit-related activities have potential to affect a property that is either listed or eligible for listing on the National Register of Historic Places. CAFO operators must contact the SHPO, THPO, and/or any Indian tribe that attaches religious and cultural significance to historic properties that may be affected. In instances where a Tribe does not have a THPO, CAFO operators should contact the appropriate Tribal government office.

New Mexico SHPO, THPO and Tribal officials may be contacted at the following addresses:

Historic Preservation Officers (SHPO)

New Mexico State Historic Preservation Officer
Department of Cultural Affairs
Historic Preservation Division
228 East Palace Avenue, Santa Fe, NM 87503
Telephone 505-827-6320; FAX: 505-827-6338
www.nmhistoricpreservation.org

Tribal Government Officials (THPOs for Mescalero Apache Tribe, Navajo Nation, and Pueblo of Zuni)

The most recent contact information for Tribal governments and Tribal Historic Preservation Officers may be accessed at: <http://www.epa.gov/earth1r6/6dra/oejta/tribalaffairs/index.html> or by contacting EPA, Region 6 Tribal Affairs Office at:

Region 6 Office of Environmental Justice and Tribal Affairs

1445 Ross Ave., Suite 1200
Dallas, TX 75202
Telephone 1-800-887-6063

APPENDIX D – NM NRCS CONSERVATION PRACTICE STANDARD CODE 590 (NUTRIENT MANAGEMENT) FROM OCTOBER 2006

Natural Resources Conservation Service

Conservation Practice Standard

NUTRIENT MANAGEMENT

(Acre)

Code 590

DEFINITION

Managing the amount, source, placement, form, and timing of the application of nutrients and soil amendments.

PURPOSES

- ◆ To budget and supply nutrients for plant production.
- ◆ To properly utilize manure or organic by-products as a plant nutrient source.
- ◆ To minimize agricultural non-point source pollution of surface and ground water resources.
- ◆ To protect air quality by reducing nitrogen emissions (ammonia and NO_x compounds) and the formation of atmospheric particulates.
- ◆ To maintain or improve the physical, chemical and biological condition of soil.

CONDITIONS WHERE PRACTICE APPLIES

This practice applies to all lands where plant nutrients and soil amendments are applied.

CRITERIA

General Criteria Applicable to All Purposes

A nutrient budget for nitrogen, phosphorus, and potassium shall be developed that considers all

potential sources of nutrients including, but not limited to animal manure and organic by-products, wastewater, commercial fertilizer, crop residues, legume credits, and irrigation water. Organic and inorganic fertilizer recommendation budgets will be developed using New Mexico State University's (NMSU) fertilizer recommendation software **NMSU Soil Test Interpretation software** (Excel workbook) or other NRCS approved software.

Realistic yield goals shall be established based on soil productivity information, historic yield data, climatic conditions, level of management and/or local research on similar soil, cropping systems, and soil and manure/organic by-products tests. For new crops or varieties, industry yield recommendations may be used until documented yield information is available. The NRCS state agronomist and NMSU shall establish yield goals and nutrient requirements for new crops as soon as possible.

Plans for nutrient management shall specify the source, amount, timing and method of application of nutrients on each field to achieve realistic production goals, while minimizing movement of nutrients to surface and/or ground waters.

Areas contained within established minimum application setbacks (e.g. sinkholes, wells, gullies, ditches, surface inlets or rapidly permeable soil areas) shall not receive direct application of nutrients.

Erosion, runoff, and water management controls shall be installed, to meet Section III of the FOTG, on

fields that receive nutrients. Irrigated fields must have an Irrigation Water Management practice developed (Practice Code 449).

Agricultural waste shall not be land-applied on soils that are frequently flooded, as defined by the National Cooperative Soil Survey, during periods when flooding is expected.

Soil Testing

Nutrient planning shall be based on a current soil test developed in accordance with NMSU guidance or industry practice if recognized by NMSU. Current soil tests are those that are no older than five years. Annually cropped fields will have a soil test taken the first year of a new plan or rotation, thereafter once in five years as a minimum. Hayland, rangeland and pasture can be tested once in five years. If organic sources of fertilizers are used, annual soil testing is required.

On fields that do not receive organic nutrients, after a baseline of two sampling periods, similar fields (rotation, soil series, slope, and irrigation type) can use a composite or aggregate (combined) sample to represent the group of fields. Nutrient recommendations for each crop can be made according to the results of the composite soil test.

Soil samples shall be collected and prepared according to the NMSU Extension guidance (Guide A-114). Fields must have 10-15 sub-samples taken to make up the composite sample to be analyzed.

Soil test analyses shall be performed by laboratories that are accepted in one or more of the following programs:

- ◆ The North American Proficiency Testing Program (Soil Science Society of America), or
- ◆ Laboratories whose tests are accepted by the NMSU.

Soil testing shall include analysis for any nutrients for which specific information is needed to develop the nutrient plan. Request analyses specified in NMSU Extension Guide A-122. These analyses will include: **pH**, **electrical conductivity (EC)**, **soil organic matter (OM)**, **nitrate nitrogen (N)**, **phosphorus (P)**, **potassium (K)**, **magnesium (Mg)**, **calcium (Ca)**, and **sodium (SAR)**. Many soils and crops in NM also show a need for sulfur, zinc, manganese, and other micronutrients. If the pH is

greater than seven, an Olsen (Sodium Bicarbonate) P-test will be done. At a pH of less than seven, the Bray P-test will be done. K-test will be done using the water extraction method. Ammonium acetate extractable K is also acceptable. Soil pH and electrical conductivity will be determined by saturation extract (salinity assessment). Exchangeable calcium, magnesium, and sodium, shall also be determined during salinity assessment to assess the sodium adsorption ratio and exchangeable sodium percentage.

Low Nitrate Soil Tests

If a soil test comes back from the lab with a test value for N at less than 1 ppm, the sample shall be rerun at the lab (same sample). If the rerun of the first sample is still less than 1 ppm, then a new sample will be taken in the field, and re-tested.

Plant Tissue Testing

Tissue sampling and testing, if used, shall be done in accordance with NMSU standards or recommendations. See NMSU Extension Guide A-123. Additional nutrients above the budget amounts may be added if interpretation of the tissue testing shows a need.

Nutrient Application Rates

Recommended nutrient application rates shall be based on NMSU recommendations (see Fertilizer Guide Extension A-128) and/or industry practice, when recognized by NMSU, that consider current soil test results (see above), realistic yield goals and management capabilities. NMSU Fertilizer Interpretation software (Excel workbook) or other NRCS approved software may be used to generate a nutrient budget for a given crop.

The planned rates of nutrient application, as documented in the nutrient budget, shall be determined based on the following guidance:

- **Nitrogen Application** - Planned nitrogen (N) application rates shall match the recommended rates, except when manure or other organic by-products are a source of nutrients. When manure or other organic by-products are a source of nutrients, see "Additional Criteria" below.
- **Phosphorus Application** - Planned phosphorus (P₂O₅) application rates shall

match the recommended rates, except when manure or other organic by-products are a source of nutrients. When manure or other organic by-products are a source of nutrients, see “Additional Criteria” below.

- **Potassium Application** - Excess potassium shall not be applied in situations in which it causes unacceptable nutrient imbalances in crops or forages. When forage quality is an issue associated with excess potassium application, state standards shall be used to set forage quality guidelines.
- **Other Plant Nutrients** - The planned rates of application of other nutrients shall be consistent with NMSU guidance or industry practice, if recognized by the NMSU.
- **Starter Fertilizers** - Starter fertilizers containing nitrogen, phosphorus, potassium, and/or micronutrients may be applied in accordance with NMSU recommendations or industry practice, if recognized by NMSU. When starter fertilizers are used, they shall be included in the nutrient budget.
- **Soil amendments** can be applied, as needed, to adjust soil pH to the specific range of the crop for optimum availability and utilization of nutrients. Most conditions will not require a pH change. NM soils range from pH 6 to 8.5 s.u. Many soils have large amounts of free lime which prevents pH adjustment with amendments such as sulfur.

Nutrient Application Timing

Timing and method of nutrient application shall correspond as closely as possible with plant nutrient uptake characteristics, while considering cropping system limitations, weather and climatic conditions, and field accessibility.

Nutrient Application Methods

Nutrient applications associated with irrigation systems shall be applied in accordance with the requirements of the Irrigation Water Management practice (Practice Code 449). Fertigation must not exceed the water holding capacity of the soil.

Additional Criteria Applicable to Manure or

Other Organic By-Products Applied as a Plant Nutrient Source

SPACING

Nutrient Values

Nutrient values of manure and other organic by-products shall be determined prior to land application based on laboratory analysis, acceptable “book values” recognized by the NRCS and/or NMSU, or historic records for the operation (two or three years of no operational change), if they accurately estimate the nutrient content of the materials. At a minimum, manure analyses shall identify nutrient and specific ion concentrations, percent moisture, and percent organic matter. Salt concentration shall be monitored so that manure applications do not cause plant damage or negatively impact soil quality.

Book values recognized by NRCS may be found in the Agricultural Waste Management Field Handbook (AWMFH), Chapter 4 – Agricultural Waste Characteristics. Acceptable values for NM can be found in the NM Nutrient Management specification. Heavy metals in biosolids have additional criteria.

Additional Soil Testing Requirements

Nitrogen soil testing for permitted Confined Feeding Operations will have the following additional requirements. Total soil nitrogen levels will be determined by Kjeldahl methods. Exchangeable nitrate will be determined by the Keeney and Nelson method using KCl.

Additional Soil Sampling Requirements

Land with a history of different application rates within the field may be required to have separate soil testing and different application rates. The New Mexico Environment Department (NMED) may require additional sampling to determine the extent of the variability and what applications can be made to zones in the field.

Nutrient Application Rates

The application rate (in/hr) for material applied through irrigation shall not exceed the soil intake/infiltration rate. The total application of water shall not exceed the water holding capacity of the soil root zone. See the Irrigation Guide in the NM Field Office Technical Guide (FOTG, Sec I) for local soil water holding capacities and soil intake rates. Application rates must be adjusted to match the soil intake rate.

The planned rates of nitrogen and phosphorus application recorded in the specification shall be determined based on the following guidance:

Nitrogen Application –

Normal N test – When the application rate is based on N (P Index <27) and the preplant/preapplication soil nitrate reading is less than 30 ppm, the **normal agronomic rates of application will be used** (as explained under Nutrient Application Rates).

High N test – When the soil N test is between 30-200 ppm nitrate, **additional testing will be done** to determine when more manure can be added. Additional testing will be done 25% of the way into the growth period of the crop (120 day corn would be tested 30 days after planting). If the preapplication (crop growing) soil test is less than 80 ppm, a maximum rate of 30 lbs/ac of N can be applied.

Excessive N test – When the soil N test is greater than 200 ppm nitrate, **no more organic nutrient sources containing N can be applied** until the level drops below 80 ppm. Additional testing will be done 25% of the way into the growth period of the crop (120 day corn would be tested 30 days after planting). If the preapplication (crop growing) soil test is less than 80 ppm, a maximum rate of 30 lbs/ac of N can be applied.

P index >27 – When the practice is being implemented on a phosphorus standard (when the Phosphorus Index is High, Very High, or Excessive), manure or other organic by-products shall be applied at rates consistent with budgeting for P as described below under Phosphorus Application. In such situations, an additional nitrogen application, from non-organic sources, may be required to supply the recommended amounts of nitrogen.

N Applied to Legumes - Manure or other organic by-

products may be applied on legumes at rates equal to 60 percent of the estimated removal of nitrogen in harvested plant biomass. See NM Nutrient Management Specification and the NMSU Soil Test Interpretation workbook.

Phosphorus Application - When manure or other organic by-products are used, the planned rates of phosphorus application will use the NM Phosphorus Index as follows:

- **Phosphorus Index (PI) Rating.** On **Very Low, Low or Medium risk sites**, application rates will be based on nitrogen crop need. On **Very High risk sites**, application rates will be based on phosphorus crop need. On **Excessive risk sites**, no phosphorus application is allowed. On **High risk sites**, the application rate will be based on 1.5 times the crop removal rate. The PI for NM is found in Agronomy Technical Note 41, and is available as a MS-Excel spread sheet found on NRCS's NM website.
<http://www.nm.nrcs.usda.gov/techserv/TechNotes/agro.htm>

A single application of phosphorus applied as manure may be made at a rate equal to the recommended phosphorus application or estimated phosphorus removal in harvested plant biomass for the crop rotation or multiple years in the crop sequence. This can only be done when the PI is **Very-Low, Low, or Medium**. When such applications are made, the application rate shall:

- not exceed the recommended nitrogen application rate during the year of application, or:
- not exceed the estimated nitrogen removal in harvested plant biomass during the year of application when there is no recommended nitrogen application.
- not be made on sites considered vulnerable to off-site phosphorus transport unless appropriate conservation practices, and management activities are used to reduce the vulnerability. Leaching and runoff practices must be included in the resource management

plan.

Timing of application

Manure shall not be applied on frozen, flooded, or saturated soil.

Apply at the times when crops will use the most nutrients. This is when the most growth is expected for the crop.

In times when crops are not actively growing, apply only as much pond effluent as can be held in the planned crop root zone. For example: if the root zone profile can hold 4 inches of water (Total Water Holding Capacity (TWHC)) and the soil moisture is at 75% TWHC, then a 1-inch application is the most that can be applied.

SPACING

Animal Feeding Operations-Setback Requirements

SPACING

Setbacks are required for application of manure, litter, and lagoon or pond wastewater. No application can be made closer than 100-feet to any down gradient surface open tile line intake structure, sink holes, well heads, or other conduits to surface or ground water.

A vegetated buffer (grass, no shrubs) 35- feet wide or more will allow organic application adjacent to the buffer.

Field Risk Assessment

When animal manures or other organic by-products are applied, a field-specific assessment of the potential for phosphorus transport from the field shall be completed. This assessment will be done using the **NM Phosphorus Index (PI)**. In such cases, plans shall include:

- a record of the PI rating for each field or sub-field, and
- information about conservation practices and management activities that can reduce the potential for phosphorus movement from the site. Practices will be listed in the Comment section on the worksheet.

When such assessments are done, the results of the assessment and recommendations shall be discussed

with the client as the practice is planned. The client will initial the review on the PI worksheet.

Heavy Metals Monitoring

When biosolids are applied, the accumulation of potential pollutants (including arsenic, cadmium, copper, lead, mercury, selenium, and zinc) in the soil shall be monitored in accordance with the US Code, Reference 40 CFR, Parts 403 and 503.

Where municipal wastewater and solids (biosolids) are applied to agricultural lands as a nutrient source, the single application (annual limit) or lifetime limits of heavy metals shall not be exceeded. The concentration of salts shall not exceed the level that will impair seed germination or plant growth.

Maximum Annual and Lifetime Heavy Metal Additions to the Soils¹		
Metal (name/sym.)	Annual Limit (lbs/ac/yr)	Lifetime Limit (lbs/ac)
Arsenic (As)	2.2	46.0
Cadmium (Cd)	2.3	33.0
Copper (Cu)	84.0	1500.0
Lead (Pb)	17.0	336.0
Mercury (Hg)	0.95	19.0
Nickel (Ni)	24.0	19.0
Selenium (Se)	5.6	112.0
Zinc (Zn)	157.0	3136.0

¹From the Code of Federal Regulations, Title 40, Vol 3, Part 503, Sec. 13, July 1 , 1999

Biosolids Applications

Biosolids shall not be applied to land that is closer than 100 feet to any water course.

Biosolids shall not be applied to land that is flooded, frozen, snow-covered or saturated soil.

Animals shall not be allowed to graze on the land for 30 days after the application of biosolids.

Food crops with harvested parts that touch applied biosolids and are totally above the soil surface shall not be harvested for 14 months after the application.

Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of biosolids, when the application remains on the land surface for four months or longer prior to incorporation into the soil. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of biosolids when the application remains on the land surface for less than four months.

Additional Criteria to Minimize Agricultural Non point Source Pollution of Surface and Ground Water Resources

An assessment shall be completed of the potential for nitrogen and/or phosphorus transport from the field if any waters of concern may be affected. Waters of concern include but are not limited to waters of the US, 303d listed streams, wells, other streams, high ground water, ponds, arroyos that flow part of the year, and lakes. The **Leaching Index (LI)** and/or **Phosphorus Index (PI)**, or other recognized assessment tools, may be used to make these assessments. The results of these assessments and recommendations shall be discussed with the client and included in the practice planning.

Nutrient Management practices developed to minimize agricultural non-point source pollution of surface or ground water resources shall include practices and/or management activities that can reduce the risk of nitrogen or phosphorus movement from the field.

Additional Criteria to Protect Air Quality by Reducing Nitrogen and/or Particulate Emissions to the Atmosphere

In areas with an identified or designated nutrient management related air quality concern, any component(s) of nutrient management (i.e., amount, source, placement, form, timing of application) identified by risk assessment tools as a potential source of atmospheric pollutants shall be adjusted, as necessary, to minimize the loss(es).

When tillage can be performed, surface applications of manure and fertilizer nitrogen formulations that are subject to volatilization on the soil surface (e.g., urea) shall be incorporated into the soil within 24 hours after application.

When manure or organic by-products are applied to grassland, hayland, pasture or minimum-till areas, the rate, form and timing of application(s) shall be managed to minimize volatilization losses.

When liquid forms of manure are applied with irrigation equipment, operators will select weather conditions during application that will minimize volatilization losses.

Operators will handle and apply dry types of animal manures when the potential for wind-driven loss is low and there is less potential for transport of particulates into the atmosphere.

Weather and climatic conditions during manure or organic by-product application(s) shall be recorded and maintained in accordance with the operation and maintenance section of this standard.

Additional Criteria to Improve the Physical, Chemical, and Biological Condition of the Soil.

Nutrients shall be applied and managed in a manner that maintains or improves the physical, chemical and biological condition of the soil. Use of nutrient sources with high salt content relative to the nutrient value will be minimized to prevent damage to plants. Salt levels will be monitored by soils testing to see that they do not exceed the permissible EC rate for the crop to be grown. See Table 4 in the NM Irrigation Guide in Sec. 1 of the FOTG for the maximum allowable salt levels by crop.

Nutrients shall not be applied to flooded or saturated soils by ground equipment when the potential for soil compaction and creation of ruts is high.

Additional Criteria for Subsurface Drip Irrigation

If nutrients are added to subsurface drip irrigation systems (SDI), a jar test must be done to determine if any of the material being added to the system will cause solids to precipitate out causing the system to plug and fail. The jar test is simply a mixture of the fertilizers (at the field concentration) applied to the water and left to stand to see if any of material settles out. See Agronomy Tech Note 71.

CONSIDERATIONS

During the planning process, consider the relationship

between nitrogen and phosphorus transport and water quality impairment. Consider the potential for nitrogen leaching into shallow ground water and potential health impacts. Consider the potential for phosphorus accumulation in the soil, the increased potential for phosphorus transport in soluble form, and the types of water quality impairment that could result from phosphorus movement into surface water bodies.

Consider the intent of this practice to prevent the nutrients (nitrogen and phosphorus) supplied for production purposes from contributing to water quality impairment.

Consider additional practices such as Conservation Cover (327), Grassed Waterway (412), Contour Buffer Strips (332), Filter Strip (393), Irrigation Water Management (449), Riparian Forest Buffer (391A), Conservation Crop Rotation (328), Cover and Green Manure (340), and Residue Management (329A, 329B, or 329C, and 344) to improve soil nutrient and water storage, infiltration, aeration, tilth, diversity of soil organisms and to protect or improve water quality.

When applicable, plans shall include other practices or management activities as determined by specific regulation, program requirements, or client goals.

Consider induced deficiencies of nutrients due to excessive levels of other nutrients.

Consider cover crops whenever possible to utilize and recycle residual nitrogen.

Consider application methods and timing that reduce the risk of nutrients being transported to ground and surface waters, or into the atmosphere. Suggestions include:

- ◆ split applications of nitrogen to provide nutrients at the times of maximum crop utilization,
- ◆ avoid winter nutrient application for spring seeded crops,
- ◆ avoid winter plow out of alfalfa to release nitrate when plants can use it in the spring,
- ◆ band apply phosphorus near the seed row,
- ◆ use precision agricultural techniques to apply nutrient materials uniformly;
- ◆ incorporation of applied manure or organic by-products immediately;
- ◆ delay field application of animal manures or other organic by-products if precipitation capable of producing runoff and erosion is forecast within 24 hours of the time of the planned application.
- ◆ Ammonia based N fertilizers should be incorporated the same day applied.

Consider minimum application setback distances from environmentally sensitive areas, such as sinkholes, wells, gullies, ditches, surface inlets or rapidly permeable soil areas. See NRCS Practice standard 633 for guidance.

Consider the potential problems from odors associated with the land application of animal manures, especially when applied near or upwind of residences.

Consider nitrogen volatilization losses associated with the land application of animal manures. Volatilization losses can become significant, if manure is not immediately incorporated into the soil after application. Consider using soil test information no older than one year, particularly if organic nutrients are used.

Consider annual reviews to determine if changes in the nutrient budget are desirable (or needed) for the next planned crop. If livestock numbers change up or down 20%, or land area increases or decreases by 20%, or the crop rotation changes, a review of the nutrient budget is needed.

On sites on which there are special environmental concerns, consider other sampling techniques. (For example: Soil profile sampling for nitrogen, Pre-Sidedress Nitrogen Test (PSNT), or soil surface sampling for phosphorus accumulation or pH changes.)

Consider ways to modify the chemistry of animal manure, including modification of the animal's diet to reduce the manure nutrient content, to enhance the client's ability to manage manure effectively.

For rapidly growing crops, apply waste in a manner that should cover no more than 25% of the leaf surface with solids.

To prevent leaf burn for some crops, apply liquids according to local climatic conditions or the NRCS irrigation guide. Application rate should vary according to the salt content (electrical conductivity for the liquid and the salt tolerance of the crop). See

Table 4 in the Irrigation Water Quality section of the Irrigation Guide in Section I of the FOTG.

Avoid applying manure and organic byproducts upwind of occupied structures when residents are likely to be home (evenings, weekends and holidays).

When applying manure with irrigation equipment, modifying the equipment can reduce the potential for volatilization of nitrogen from the time the manure leaves the application equipment until it reaches the surface of the soil (e.g. reduced pressure, drop down tubes for center pivots). N volatilization from manure in a surface irrigation system will be reduced when applied under a crop canopy.

Plan nutrient applications and tillage operations to promote soil carbon buildup and decrease greenhouse gas emissions (e.g. nitrous oxide, N₂O, carbon dioxide, CO₂).

CAFO operations seeking permits under USEPA regulations (40CFR Parts 122 and 412) should consult with the permitting authority for additional criteria.

PLANS AND SPECIFICATIONS

Plans and specifications shall be in keeping with this standard and shall describe the requirements for applying the practice to achieve its intended purpose(s), using nutrients to achieve production goals and to prevent or minimize resource impairment. See **New Mexico Nutrient Management Specification 590** for required components.

OPERATION AND MAINTENANCE

The owner/client is responsible for safe operation and maintenance of this practice including all equipment.

Operation and maintenance will address the following:

- Periodic specification review to determine if adjustments or modifications to the practice are needed. **As a minimum**, the specification will be reviewed and revised with each soil test cycle.
- Protection of fertilizer and organic by-product storage facilities from weather and accidental leakage or spillage.
- Calibration of application equipment to ensure uniform distribution of material at planned rates.

- Documentation of the actual rate at which nutrients were applied. When the actual rates used differ from or exceed the recommended and planned rates, records will indicate the reasons for the differences.

Maintaining records to document practice implementation. As applicable, records include:

- soil test, water, plant, and organic by-product test results and recommendations for nutrient application,
- quantities, analyses and sources of nutrients applied,
- dates and method of nutrient applications,
- crops planted, planting and harvest dates, yields, and crop residues removed,
- dates of review and person performing the review, and recommendations that resulted from the review.

Records should be maintained for five years; or for a period longer than five years if required by other Federal, state, or local ordinances, or program or contract requirements.

Workers should be protected from and avoid unnecessary contact with chemical fertilizers and organic by-products. Protection should include the use of protective clothing when working with plant nutrients. Extra caution must be taken when handling ammonia sources of nutrients, or when dealing with organic wastes stored in unventilated enclosures.

The disposal of material generated by the cleaning nutrient application equipment should be accomplished properly. Excess material should be collected and stored or field applied in an appropriate manner. Excess material should not be applied on areas of high potential risk for runoff and leaching.

The disposal or recycling of nutrient containers should be done according to state and local guidelines or regulations.

REFERENCES

Extension publications mentioned above are available on the NMSU website, http://www.cahe.nmsu.edu/pubs/_a/

The Animal Waste Management Field Handbook is

available in most NRCS County Field Offices. It can also be accessed from the NRCS National website, <http://www.ncg.nrcs.usda.gov/awmfh.html>

NMSU Fertilizer Interpretation software, Phosphorus Assessment Tool, and other technical information is available on the NM NRCS website, <http://www.nm.nrcs.usda.gov/technical/fotg/section-4/jobsheets/js590.xls> and <http://www.nm.nrcs.usda.gov/technical/tech-notes/agro/ag57.xls>

The Code of Federal Regulations can be accessed from the website,

<http://www.access.gpo.gov/nara/cfr/index.html>.

State regulations may be accessed from the New Mexico Environment Department website, <http://www.nmenv.state.nm.us>.

Bremner, J.M. and C.S. Mulvaney. 1982. Nitrogen – Total. *In* Methods of Soil Analysis Part 2. Page, A.L. (ed.) American Society of Agronomy and Soil Science Society of Agronomy, Madison, WI. Pp 595 – 624.

Follett, R.F. 2001. Nitrogen Transformation and Transport Processes. pp. 17-44, In R.F. Follett and J. Hatfield. (eds.). 2001. Nitrogen in the Environment; Sources, Problems, and Solutions. Elsevier Science Publishers. The Netherlands. 520 pp.

Keeney, D.R., and D.W. Nelson. 1982. Nitrogen – Inorganic Forms. *In* Methods of Soil Analysis Part 2. Page, A.L. (ed.) American Society of Agronomy and Soil Science Society of Agronomy, Madison, WI. Pp 643 - 698.

Sims, J.T. (ed.) 2005. Phosphorus: Agriculture and the Environment. Agron. Monogr. 46. ASA, CSSA, and SSSA, Madison, WI.

Stevenson, F.J. (ed.) 1982. Nitrogen in Agricultural Soils. Agron. Series 22. ASA, CSSA, and SSSA, Madison, WI.

**FINAL 2009 CONCENTRATED ANIMAL FEEDING OPERATION (CAFO)
GENERAL PERMIT FACT SHEET**

NPDES General Permit No. NMG010000

U.S. Environmental protection agency region 6

National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Concentrated Animal Feeding Operations (CAFOs) in New Mexico

AGENCY: U.S. Environmental protection agency region 6

ACTION: Issuance of a Final NPDES General Permit for CAFOs

SUMMARY:

EPA Region 6 is reissuing NPDES General Permit No. NMG010000 for discharges from concentrated animal feeding operations (CAFOs) in New Mexico (except Indian Country). This permit was originally issued in the Federal Register at 58 FR 7610 with an effective date of March 10, 1993, and an expiration date of March 10, 1998. The applicable requirements from that 1993 permit are continued in the final permit. The final permit includes additional requirements contained in revised CAFO regulations at 40 CFR 122 and 412 which were published in the Federal Register at 73 FR 70,418 on November 20, 2008.

GENERAL STATUTORY AND REGULATORY INFORMATION

Section 301(a) of the Clean Water Act (CWA), 33 USC 1311(a), prohibits the discharge of pollutants to waters of the U.S. in the absence of authorizing permits, including NPDES permits. The CWA Section 402, 33 USC 1342, authorizes EPA to issue NPDES permits allowing such discharges on condition that they in part will comply with requirements implementing CWA Sections 301, 304, and 401 [33 USC 1311, 1314, and 1341].

Among those requirements are effluent limitations reflecting levels of technological capability, water quality standards, and other more stringent requirements States may adopt. Violation of a condition contained in an NPDES permit, whether an individual or general permit, is a violation of the CWA and subjects the operator of the permitted facility to the penalties specified in Section 309 of the Act.

Under the CWA, the Permitting Authority may issue general permits to regulate numerous facilities which have similar discharges and are subject to the same conditions and limitations within a specified geographic area [40 CFR 122.28]. Using general permits conserves resources and reduces the paperwork burden associated with obtaining discharge authorization for the

regulated community.

EPA has determined that a general permit is the appropriate mechanism to address the majority of CAFOs that are subject to the requirements of the NPDES program and the CWA (see Section 2.1 of EPA's December 31, 2003, NPDES Permit Writers' Guidance Manual and Example NPDES Permit for CAFOs).

Pursuant to section 402 of the CWA, 33 U.S.C. section 1342, EPA proposed and solicited comments on NPDES General Permit NMG010000 for discharges from concentrated animal feeding operations (CAFOs) in New Mexico at 74 FR 3592 (January 21, 2009). The comment period closed on February 20, 2009. EPA has considered all comments received on the proposed permit action and made significant changes to the proposed permit in response to those comments. EPA is issuing this Final Fact Sheet to provide a rationale for these significant changes in the context of the summary of the principle facts and the factual, legal, methodological and policy questions considered in preparing the draft general permit.

A copy of the Region's responses to comments and the final permit may be obtained from the EPA Region 6 internet site: <http://www.epa.gov/region6/water/npdes/cafo/index.htm>.

NPDES GENERAL PERMIT FOR CAFO - FACT SHEET

Supplementary information in this Fact Sheet is organized as follows:

- I. Permit Area and Coverage
- II. Effluent Limitations and Standards
- III. Special Conditions
- IV. Discharge Monitoring and Notification Requirements
- V. Annual Report
- VI. Standard Permit Conditions
- VII. Other Legal Requirements

I. PERMIT AREA AND COVERAGE

A. Permit Area

This permit offers NPDES permit coverage for discharges from operations defined as concentrated animal feeding operations (CAFOs) in the State of New Mexico (except Indian Country).

B. Permit Coverage

This permit provides coverage for any eligible operation that discharges or proposes to discharge and which meets the definition of a Large CAFO at 40 CFR 122.23(b)(4), is subject to effluent limitations guidelines at 40 CFR 412 Subparts A (Horses and Sheep) or C (Dairy Cows and Cattle Other than Veal Calves), and that is located in the permit coverage area.

CAFOs are point sources subject to the NPDES permitting program. A permit is required for any CAFO that discharges or proposes to discharge pollutants to waters of the U.S. [40 CFR Part 122.21(a) and 122.23(d)(1)]. A CAFO proposes to discharge if it is designed, constructed, operated or maintained such that a discharge will occur.

C. Eligibility for Coverage

The proposed permit has been developed to fulfill the NPDES general permit coverage requirements of 40 CFR 122.28(a).

Eligible CAFOs may apply for authorization under the terms and conditions of this permit, by submitting a notice of intent (NOI) to be covered by this permit.

CAFO owners/operators may also seek to be excluded from coverage under this permit by (1) submitting to the Director (see Part I.E.4) a notice of termination form (see Appendix C) or (2) by applying for an individual NPDES Permit in accordance with Part I.F.

D. Limitations on Coverage

In accordance with 40 CFR 122.28(a)(4)(ii), the general permit may exclude specified sources or areas from coverage. Part I.D of the proposed permit describes CAFOs that are not eligible for coverage under this NPDES general permit, and must apply for an individual permit if seeking permit coverage. Parts I.D.1 and I.D.2 have been included in the permit in accordance with 40 CFR Part 122.28(b)(3). Part I.D.3 excludes duck, veal, poultry, and swine CAFOs. EPA is currently not aware of any such facilities in the permit coverage area and believes that if any such facilities are identified that due to the low number of such facilities in the area covered by the proposed permit that individual permit coverage would be more appropriate for such CAFOs. Restrictions on coverage for CAFOs that do not fulfill the Endangered Species Act (Part I.D.4) and/or the National Historic Preservation Act (Part I.D.5) were contained in the previous CAFO general permit. Parts I.D.6 and I.D.8 have been included in the permit in accordance with 40 CFR 131.13(a)(3) and 40 CFR 412, respectively. Part I.D.7 is based on 40 CFR 122.4(i), which prohibits issuing a NPDES permit to a new discharger if it will cause or contribute to a water quality standards violation. In Part I.D.9, CAFOs located on Indian lands in New Mexico are excluded from general permit coverage, and would require an individual permit if coverage is sought.

Changes from Proposed Permit: EPA received a comment stating that the NEPA review conducted for the 1993 general permit, which resulted in a Finding of No Significant Impact, is sufficient for all CAFOs seeking coverage under the permit and no additional NEPA analyses are necessary for new source CAFOs.

In response to this comment, EPA has stated that EPA Region 6 issued an Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) in connection with issuance of 1993 CAFO permits, but also performed subsequent NEPA review on individual NOIs submitted by a “new source” CAFO under those general permits. Under that tiered approach, Region 6 considered potential environmental impacts then generally associated with CAFOs when it initially issued the general permits, then focused on potential site-specific impacts in the subsequent NEPA review of each “new source” CAFO submitting an NOI. EPA thus completed NEPA review under that permit only on new source CAFOs constructed prior to the permits’ expiration in 1998. Only CAFOs on which construction commenced after promulgation of the 2003 NSPS are now considered “new sources,” however, and EPA Region 6 has thus performed prior NEPA review on no new source seeking coverage under today’s permit.

The draft permit may have contributed to confusion on this issue by indicating new sources could submit a previous EPA NEPA review document in lieu of an Environmental Impact Document (EID). Part I.D.8 and Part I.E.8 of the final permit have thus been amended to clarify that new sources must submit an EID, not a previous EPA NEPA review document, with their NOIs. An

EIS or EA issued by another federal agency on a specific “new source” CAFO may be incorporated in an EID submitted to EPA, however.

E. Application for Coverage

In accordance with 40 CFR Parts 122.21(i)(1)(x) and 122.28(b)(2), operators of CAFOs seeking coverage under this general permit must submit a notice of intent (NOI) and a nutrient management plan (NMP) to EPA.

CAFOs seeking permit coverage may either submit the NOI electronically or by mail. Applicants submitting their NOI electronically shall do so using an electronic version of NPDES Form 2B Application (see CAFO General Permit Appendix A) via the EPA Region 6 website (see <http://www.epa.gov/region6/water/index.htm>), in accordance with 40 CFR 122.21(a)(2)(ii). CAFOs that submit a NOI electronically will receive an electronic notification of receipt from the EPA. This notice must be signed and submitted by mail to the EPA prior to EPA making a determination of NOI completeness, in order to fulfill the signature requirements of 40 CFR 122.22.

Applicants submitting their NOI by mail shall submit a signed copy of NPDES Form 2B Application (see CAFO General Permit Appendix A or http://www.epa.gov/npdes/pubs/cafo_fedrgstr_form2b.pdf) to EPA.

Upon receipt, EPA will review the NOI and NMP to ensure that all permit requirements are fulfilled. EPA may request additional information from the CAFO owner or operator if additional information is necessary to complete the NOI and NMP or clarify, modify, or supplement previously submitted material. If EPA makes a preliminary determination that the NOI is complete, the NOI, NMP and draft terms of the NMP to be incorporated into the permit will be made available at EPA Region 6's website at <http://www.epa.gov/region6/water/index.htm> for a 30-day public review and comment period. EPA will respond to comments received during this period and, if necessary, require the CAFO owner or operator to revise the nutrient management plan. At the end of this process the applicant will be granted coverage under this general permit only upon written notification by EPA. If EPA determines that the facility cannot be covered under this general permit, the facility shall apply for an individual permit.

The method used in the current proposed permit for implementing 40 CFR Part 6 (Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act) is the same as that used in the expired permit. Specifically, New Source CAFOs must submit a Finding of No Significant Impact or an Environmental Impact Statement issued by EPA Region 6 along with a Notice of Intent in order to seek coverage by the general permit.

For an existing CAFO, the proposed permit clarifies the procedure to be used for permit coverage of a significant expansion that is constructed after the effective date of the permit. A significant

expansion of a CAFO is defined as one large enough to be considered a New Source. A new Source determination is made by taking into account the definition of a New Source (40 CFR 122.2) and the criteria for New Source Determination (40 CFR 122.29(a) and (b)). If EPA determines the expansion to be a New Source, then the permittee must include a Finding of No Significant Impact or an Environmental Impact Statement issued by EPA Region 6 along with their Notice of Intent to have the expansion covered by the permit.

Changes from Proposed Permit: EPA received several comments requesting that the 90-day timeframe for NOI or permit application submittal be extended to minimize any gap in permit coverage for existing CAFOs. In response to these comments, EPA has clarified Part I.E.1.a.i to state that for any facility that received authorization to discharge under the 1993 CAFO general permit and complies with the 90-day timeframe, authorization under the 1993 CAFO permit is automatically continued until coverage is granted under this permit or coverage is otherwise terminated.

EPA also received comments observing that the preamble to the 2003 CAFO rule explains that “extending housing structures by constructing new housing adjacent to existing housing is not typically considered a new source.” One of these commenters recommended that EPA remove any reference to requiring information on the expansion of an existing facility be submitted to EPA for a determination of a new source. In response to these comments, EPA stated that 40 CFR 122.29(b) sets forth the criteria for EPA to apply when considering whether a facility expansion makes a source a “new source” for NPDES permitting purposes. The preamble statement (at 68 FR 7200) these comments reference provides an example of a type of facility expansion that would not itself be typically considered a “new source.” As also indicated in the preamble, however, a similar expansion might be considered a “new source” under some circumstances, e.g., if it required independent production and waste handling processes. The final permit continues to require that applicants submit information on facility expansions. EPA has amended Part I.E.8 to clarify that the applicant must submit to EPA information describing an expansion so that EPA may determine if the expansion is a new source.

F. Requiring an Individual Permit

In accordance with 40 CFR Part 122.28(b)(3)(i), EPA may determine that providing coverage under a general permit is inappropriate for a particular CAFO and may require such a facility to apply for an individual NPDES permit.

G. Continuation of this Permit

In accordance with 40 CFR Part 122.46(a), this permit has a term of five years from the effective date. If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 40 CFR 122.6 and section I.G of the permit and will remain in force and effect.

Changes from Proposed Permit: EPA received comments that requested the addition of language to Part I of the permit allowing permit coverage to be transferred with a transfer of ownership in circumstances where the change in ownership is the only change to the operation. This language is necessary to ensure timely permit coverage for new owners of an existing operation where no structural or operational changes are proposed. In response to this comment, EPA has added Part I.H to allow for a minor modification of permit coverage due to a change in ownership as described in 40 CFR 122.63(d).

II. RATIONALE FOR EFFLUENT LIMITATIONS AND STANDARDS

A. Effluent Limitations

Section 301 of the CWA prohibits the discharge of pollutants by any point source into waters of the U.S. except in accordance with a permit. It also requires that dischargers comply with effluent limitations necessary to meet State water quality standards. The NPDES permit regulations at 40 CFR 122.44(a) and (d) implement Section 301 by requiring that each NPDES permit issued under Section 402 include conditions that meet technology-based effluent limitations and standards, as well as water quality standards and State requirements.

1. Technology-based Effluent Limitations

Large CAFOs are subject to the effluent guidelines found at 40 CFR Part 412.

Pursuant to the Clean Water Act (the “Act”) Section 402(a)(2) [40 CFR 122.44(k)(3)], best management practices (BMPs) are being proposed in the draft permit. These practices are reasonably necessary either to achieve effluent limitations or to carry out the Act’s goals of eliminating the discharge of pollutants as much as practicable and to maintain water quality

a. Technology-based Effluent Limitations and Standards – Production Area

The proposed permit has been developed to fulfill the NPDES general permit coverage requirements of 40 CFR 122.42(e)(1)(i), 412.31 and 412.43.

Part II.A.1.a (Effluent Limitations) is based on 40 CFR 412 for Large CAFOs and best professional judgement for other CAFOs. It was contained in the previous general permit requirements and, therefore, also based on 40 CFR 122.44(l) which requires limits in a reissued permit to be at least as stringent as limits in the previous permit. The minimum storage design specifications in II.A.1 are based on EPA’s CAFO technical guidance document “Managing Manure Nutrients at Concentrated Animal Feeding Operations” December 2004, Chapter 2, Section B.1.

b. Additional measures and records

The production area of the CAFO must fulfill the requirements of Part II.A.1.B of the proposed permit and 40 CFR 412.37(a) and (b).

2. Additional Requirements – Applicable to the Production Area

Large CAFOs are subject to the effluent guidelines found at 40 CFR Part 412. Other requirements of this section (Parts II.A.2.a(viii)-(xi)) were contained in the previous permit and are retained in the draft permit, consistent with 40 CFR 122.44(l).

- a. This section of the proposed permit includes additional requirements that are applicable to the production area of the CAFO. The basis for these requirements is explained below.
 - i. Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structures. [40 CFR 412.37(a)(1)(i)]
 - ii. Daily inspections of all water lines, including drinking water and cooling water lines. [40 CFR 412.37(a)(1)(ii)]
 - iii. Installation of a depth marker in all open surface liquid impoundments which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event. [40 CFR 412.37(a)(2)]

The proposed permit also requires that the depth marker shall be visible from the top of the levee. This requirement was included in the previous permit.

- iv. Weekly inspections of the manure, litter, and process wastewater impoundments noting the level as indicated by the depth marker installed in accordance with 40 CFR 412.37(a)(2). [40 CFR 412.37(a)(1)(iii)]
- v. Correction of any deficiencies that are identified as a result of visual inspections as soon as possible. [40 CFR 412.37(a)(3)]
- vi. No disposal of animal mortalities in any liquid manure or process wastewater systems and handling of animal mortalities in such a way as to prevent discharge of pollutants to surface water. [40 CFR 412.37(a)(4)].

The requirement to properly dispose of dead animals within 3 days, unless otherwise provided for by the Director, was included in the previous permit.

- vii. Maintenance of complete records for the production area, in accordance with 40 CFR 412.37(b). Records must be maintained on-site at the permitted CAFO for five years from the date they are created and must include the records identified in the Operation and Maintenance section of Table IV-A of the permit.

Changes from Proposed Permit: EPA received comments that suggested that because it is often difficult or impossible to completely divert and isolate outside surface drainage from the production area, and because the federal rule and other parts of the permit only require diversion “as appropriate,” EPA should soften the language in II.A.2.a.x to be more consistent with the language in III.A.3.a. One commenter further suggested that Part II.A.2.a.x and Part III.A.3.b of the permit be modified to require that the volume of run-on not diverted must be considered when designing the CAFO’s retention structure capacity.

In response to this comment, Part II.A.2.a.x has been modified to include the term “as appropriate.” Part II.A.2.a.x has also been modified to clarify that retention structures must include adequate storage capacity for clean water that is not diverted.

b. Prohibitions

The prohibitions included in Part IIA.2.b were contained in the previous permit and are retained in the proposed permit.

3. Water Quality-based Effluent Limitations and Standards – Production Area

Federal regulations [40 CFR 122.44(d)] require permit limitations to control all pollutants which may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard. A state-wide general permit must assure that water quality standards will not be violated by authorized discharges from any facility covered by that permit, including CAFOs located on small upstream tributaries. A general permit’s water quality-based requirements must, therefore, be sufficiently protective to ensure that no authorized discharges anywhere in the State will violate water quality standards. EPA may impose additional water quality-based limitations on a site-specific basis, or require the facility to obtain coverage under an individual permit, if information in your NOI, required reports, or from other sources indicates that your discharges are not controlled as necessary to meet applicable water quality standards.

In those cases where technology-based effluent limitations are not sufficient to meet water quality standards, and where an analysis of frequency, duration and magnitude of the anticipated discharge (consisting of potential overflows of manure, litter, or process wastewater) indicates the reasonable potential to violate applicable water quality standards the permitting authority must develop more stringent water quality-based effluent limitations on a site-specific basis. NPDES permits for CAFOs may include BMPs as water quality-based effluent limitations or use BMPs that are reasonably necessary to meet water quality-based effluent limitations [40 CFR 122.44(k)].

In addition these requirements may apply to instances where the CAFO discharges to 303(d) listed (impaired) water bodies and the discharge contains pollutants for which the waterbody is listed. For CAFO operations this may include but is not limited to nutrients, oxygen demanding substances or bacteria. . Examples of this include discharges to water quality impaired waters, discharges to water designated by the State as Tier 2 or 2.5, or excessive chronic discharges.

CAFOs that discharge or propose to discharge to an impaired water will be informed by the EPA if any additional limits or controls are necessary to protect water quality. For impaired waters with an EPA approved or established TMDL, additional requirements will be consistent with the

assumptions of any available wasteload allocation in the TMDL. For impaired waters without an EPA approved or established TMDL, additional requirements will be consistent with water quality standards. Coverage under an individual permit may be required in accordance with Part I.D.1 of the proposed permit. Any additional limits or controls shall be included in the NMP.

CAFOs that discharge or propose to discharge to an impaired water must implement and maintain any control measures or conditions on their site that enabled the CAFO to become eligible for coverage under Part I.D.7 of the proposed permit, and shall include these control measures or conditions in its NMP.

If the CAFO discharges or proposes to discharge directly to waters designated by a State or Tribe as Tier 2 or Tier 2.5 for antidegradation purposes under 40 CFR 131.12(a) (see list of Tier 2 and 2.5 waters on EPA's website at <http://www.epa.gov/npdes/stormwater/msgp>), EPA may notify the facility that additional analyses, control measures, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or notify you that an individual permit application is necessary in accordance with Part I.D.7. Any such additional requirements shall be included in the NMP.

In order to address the potential for frequent discharges from a facility and to address water quality protection from storm events smaller than the 25-year, 24-hour storm event, EPA has developed a water quality-based reduction plan requirement. This requirement is not triggered by discharges due to storms larger than the 25-year, 24-hour storm event, but rather discharges caused by a series of smaller storms. If discharges occur as a result of storm events smaller than the 25-year, 24-hour storm event more than once in three (3) years, the discharger must prepare a plan to minimize the frequency of discharges caused by such chronic rainfall events. The plan, which may consist of operational, maintenance, and/or structural modifications, must be developed within six (6) months and implemented within one (1) year after the discharge event triggering action under this section. This requirement is based on the water quality standard exceedance frequency for aquatic life for the development of acute numeric standards (acute criteria), which is described in 40 CFR 131.36(c)(2)(ii).

Changes from Proposed Permit: EPA received comments requesting the removal of the Water Quality-Based Reduction Plan requirement. The commenters asserted that such a plan is unnecessary as a general requirement for CAFOs that are designed, constructed, operated, and maintained for the 25-year, 24-hour storm. In response to these comments, EPA has removed the Water Quality-Based Reduction Plan requirement from Part II.A.3.c.

If at any time the facility becomes aware, or EPA determines, that any discharge causes or contributes to an exceedance of applicable water quality standards, the facility must take corrective action as required in Part III.A.3.a of the proposed permit.

Changes from Proposed Permit: EPA received a comment which stated that EPA should clarify

the requirement in II.A.3.d to take corrective action for discharges that cause or contribute to an exceedance of water quality. This commenter asserted that the provisions of the proposed permit that are referenced (II.A.3.a) do not specify what corrective action must be taken.

In response to this comment, EPA has modified this requirement to clarify that if at any time the facility becomes aware, or EPA determines, that a discharge to an impaired water has occurred or is proposed to occur and the requirements of Part II.A.3.a.i-iii have not been addressed, the facility must take corrective action to fulfill the requirements of Part II.A.3.a.i-iii. The corrective action requirement has been moved from Part II.A.3.d to Part II.A.3.a.iv of the permit.

4. Technology-based Effluent Limitations and Standards – Land Application Areas under the Control of the CAFO Owner/Operator

The CAFO must develop and implement a nutrient management plan. [40 CFR 412.4(c)(1)]

This section is based upon the following regulatory requirements:

- a. Develop and implement a nutrient management plan that is based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field. [40 CFR 412.4(c)(1)]
- b. Address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters. [40 CFR 412.4(c)(1)]
- c. Determine application rates for manure, litter, and process wastewater that minimize phosphorus and nitrogen transport from the field to surface waters in accordance with the most current New Mexico NRCS Conservation Practice Standard Code 590 (Nutrient Management), which has been adopted by the Director as the technical standard for nutrient management. [40 CFR 412.4(c)(2)]
- d. In addition to the above technology-based effluent limitations for the land application areas, EPA has established BPJ requirements for identification of site specific conservation practices to control runoff of pollutants to waters of the U.S. [40 CFR 122.42(e)(1)(vi)]
- e. Establishment of protocols to land apply manure, litter, and process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater. [40 CFR 122.42(e)(1)(vii)]
- f. Analyze manure a minimum of once annually for nitrogen and phosphorus content and soil a minimum of once every five years for phosphorus content. [40 CFR 412.4(c)(3)]

- g. Periodically inspect for leaks equipment used for land application of manure, litter, or process wastewater. [40 CFR 412.4(c)(4)]
- h. Do not apply manure, litter, or process wastewater closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters. As a compliance alternative, the CAFO may substitute the 100-foot setback with a 35-foot wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited. As a compliance alternative, the permittee may also demonstrate that a set-back or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot setback. [40 CFR 412.4(c)(5)]
- i. Complete on-site records including the site specific NMP must be maintained to document implementation of all required land application practices. [40 CFR 412.37(b)]

5. Other Limitations for Land Application Areas under the Control of the CAFO Owner/Operator

- a. Additional BMPs to control discharges from land application areas. The requirements of this section were contained in the previous permit and are retained in the draft permit, consistent with 40 CFR 122.44(l).
- b. Prohibitions
 - (i) There shall be no discharge of manure, litter or process wastewater to a water of the United States from a CAFO as a result of the application of manure, litter or process wastewater to land areas under the control of the CAFO, except where it is an agricultural storm water discharge. [40 CFR 122.23(e)]
 - (ii) Waste shall not be applied to land when the ground is frozen, saturated with water, or during rainfall events. This requirement was contained in the previous permit and is retained in the draft permit, consistent with 40 CFR 122.44(l).
- c. Water Quality-Based Effluent Limitations.

Discharges from CAFO land application areas, except where it is an agricultural storm water discharge, are subject to NPDES requirements, including water quality-based effluent limitations. Federal regulations [40 CFR 122.44(d)] require permit limitations to control all pollutants which may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard. In most instances, a CAFO that meets technology-based permit limits requiring

manure to be applied at appropriate agronomic rates will eliminate all or most dry weather discharges. However, if such discharges remain, the Permitting Authority must determine the need for additional water quality-based effluent limitations to meet applicable water quality standards based on the circumstances of each particular case (see the Preamble to the Final Rule, 73 FR 70,418 (November 20, 2008)). A state-wide general permit must ensure that water quality standards will not be violated by authorized discharges from any facility covered by that permit, including CAFOs located on small upstream tributaries. A general permit's water quality-based requirements must, therefore, be sufficiently protective to ensure that no authorized discharges anywhere in the State will violate water quality standards (see Water Quality-based Effluent Limitations and Standards – Production Area, above).

EPA has determined that water quality-based effluent limitations are necessary to address dry weather discharges from land application areas that cause or contribute to an excursion above New Mexico Water Quality Standards. The proposed permit prohibits all dry weather discharge from the land application area. This includes, but is not limited to, the dry weather discharge of irrigation water not associated with nutrient application on fields where manure was previously applied.

***Changes from Proposed Permit:** EPA received comments which suggested that dry weather discharges from a CAFO that has properly constructed, operated, and maintained land application equipment should not be prohibited but should be reportable discharges.*

In response to this comment, EPA has stated that in most instances, a CAFO that meets technology-based permit limits for land application areas will eliminate all or most dry weather discharges. However, if such discharges remain, this water quality-based effluent limit (WQBEL) is necessary to ensure that water quality standards will not be violated by authorized discharges from any facility covered by the state-wide general permit. While the dry weather discharge prohibition has not been removed from the permit, Part II.A.5.c has been amended to clarify that there shall be no unauthorized dry weather discharges from land application sites.

6. Effluent Limitations - Other Discharges

a. Other production area discharges

Permit limitations are based on best professional judgment (BPJ) when national effluent limitations guidelines that apply to the appropriate category, or to the particular process involved, have not been issued. EPA can use BPJ to develop special permit conditions to address specific discharges at CAFOs, such as washdown of equipment that has been in contact with manure, discharges of fuel, and pollutants (i.e., manure, feathers, and feed)

which have fallen to the ground immediately downwind from confinement building exhaust ducts and ventilation fans and are carried by storm water runoff to waters of the U.S. (see Section 4.1.1 of EPA's December 31, 2003, NPDES Permit Writers' Guidance Manual and Example NPDES Permit for CAFOs).

Discharges from CAFOs, including process wastewater discharges from outside the production area, non-process wastewater discharges, and storm water discharges not addressed under the ELG, except where they are considered an agricultural storm water discharge, are subject to NPDES requirements, including water quality-based effluent limitations. EPA has determined that water quality-based effluent limitations are necessary to address the following discharges that may cause or contribute to an excursion above New Mexico Water Quality Standards.

Process wastewater discharges from outside the production area, including: washdown of equipment that has been in contact with manure, raw materials, products or byproducts that occurs outside of the production area; runoff of pollutants from raw materials, products or byproducts (such as manure, feathers, litter, bedding and feed) from the CAFO that have been spilled or otherwise deposited outside the production area that have the potential to contribute pollutants to waters of the U.S. shall be identified in the NMP. The NMP shall identify measures necessary to ensure that applicable water quality standards are not exceeded.

Wastewater discharges that do not meet the definition of process wastewater, including: discharges associated with feed, fuel, chemical, or oil spills, equipment repair, and equipment cleaning where the equipment has not been in contact with manure, raw materials, products or byproducts; domestic wastewater discharges and have potential to contribute pollutants to waters of the U.S. shall be identified in the NMP. The NMP shall identify measures necessary to ensure that water quality standards are not exceeded.

Storm water discharges that are not addressed under the effluent limitations in Part II above remain subject to applicable industrial or construction storm water discharge requirements.

B. Other Legal Requirements

No condition of this permit releases the permittee from any responsibility or requirements under other statutes or regulations, Federal, State/Tribal, or local [40 CFR Parts 122.1(f) and 122.49]

III. SPECIAL CONDITIONS

A. Nutrient Management Plan (NMP)

1. Schedule. CAFOs seeking coverage under this permit must submit the completed NMP to EPA along with the NOI. The permittee shall implement its NMP as soon as possible and modify as necessary upon authorization under this permit in accordance with 40 CFR 122.23(h).
2. NMP Review and Terms

Each permittee must develop, submit with its NOI, and implement a site specific NMP. The NMP must specifically identify and describe the practices that will be implemented to assure compliance with the effluent limitations and special conditions in this CAFO general permit. The NMP must be developed in accordance with the New Mexico NRCS Conservation Practice Standard Code 590 (Nutrient Management). As provided in 40 CFR 123.36, these technical standards must be consistent with 412.4(c)(2), which in part provides that such standards must operate to minimize the transport of nutrients to surface waters. The nutrient management plan accomplishes this primarily by restricting the quantity of nutrients that can be land applied and matching that quantity with the nutrient needs of the crops being grown on the fields used for such land application. [40 CFR 122.23(h)]

Upon receipt of the NMP, the Director will review the NMP. The Director can request additional information if needed. The Director will use the NMP to identify site-specific permit terms, which must be incorporated as terms and conditions of the permit. [40 CFR 122.23(h)]

Once the NOI and NMP are complete and have been reviewed by the Director, the Director will notify the public of his or her proposal to grant coverage under the general permit. The Director will publish the notice of intent submitted by the CAFO, including the CAFO's NMP, and the terms of the NMP to be incorporated into the permit, as determined by the Director, at the EPA Region 6, Water Quality Protection Division internet site (<http://www.epa.gov/region6/water/index.htm>). The notice will also provide the opportunity for the request for a public hearing on the NOI and draft NMP in accordance with 40 CFR 124.11 and 12. The public is provided 30 days to comment and request a hearing on the proposed terms of the NMP to be incorporated into the permit. The Director will respond to significant comments and can revise the NMP or terms of the permit if necessary. [40 CFR 122.23(h)]

The Director will notify the CAFO owner or operator that coverage under the general permit has been authorized and of the applicable terms and conditions of the permit. These site specific permit terms will be provided to the permittee in a written permit authorization notice. When the Director authorizes the CAFO owner or operator to discharge under the general permit, the terms of the NMP must be incorporated as terms and conditions of the permit for the CAFO. [40 CFR 122.23(h)]

3. NMP Content

The proposed general permit specifies that each NMP must, at a minimum, include practices and procedures necessary to implement the applicable effluent limitations and standards. In addition, each NMP must meet measures required under 40 CFR 122.42(e)(1)(i-ix), and specified in the general permit. (Note: EPA has addressed mortality management [40 CFR 122.42(e)(1)(ii)] and direct contact of confined animals with waters of the U.S. [40 CFR 122.23(1)(iv)] in Part II.A of the proposed permit and therefore does not require the NMP to address these requirements.)

These requirements include the following:

- a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities. [40 CFR 122.42(e)(1)(i)]
- b. Ensure that clean water is diverted, as appropriate, from the production area. [40 CFR 122.42(e)(1)(iii)]

Changes from Proposed Permit: EPA received a comment which suggested that Part III.A.3.b of the permit be modified to require that the volume of run-on not diverted must be considered when designing the CAFO's retention structure capacity. In response to this comment, Part III.A.3.b has been modified to clarify that retention structures must include adequate storage capacity for clean water that is not diverted.

- c. Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals or contaminants. [40 CFR 122.23(1)(v)]
- d. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States and specifically, to minimize the runoff of nitrogen and phosphorus. [40 CFR 122.23(1)(vi)] The requirement to identify areas that have a high potential for significant erosion and measures to limit erosion and pollutant runoff was included in the previous permit.
- e. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil. [40 CFR 122.23(1)(vii)]
- f. Establish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater. [40 CFR 122.23(1)(viii)]

Changes from Proposed Permit: EPA received a comment stating that the minimum NMP requirements for supporting the development of site specific terms (III.A.3.f.i-iv) are already

a component of the NMP. This section should be removed to prevent confusion and could force a producer to use the linear approach. In response to this comment, EPA has removed Part III.A.3.f.i-iv from the permit and has modified Part III.A.3.f to require that the NMP include any additional information necessary to assess the adequacy of the application rates included in the NMP.

g. Application rates may be expressed in NMPs consistent with one of the two approaches described in (i) and (ii) below:

(i) Linear Approach. An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(A) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the Director, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms must include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field, the crops to be planted in each field or any other uses of a field such as a pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendation from EPA approved sources (see below) for each crop or use identified for each field, credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application, and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

EPA approved sources for nitrogen and phosphorus crop recommendations include the New Mexico NRCS, New Mexico State University, or an equivalent source.

(B) Large CAFOs that use this approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; [40 CFR 122.42(e)(5)(i)]

(ii) Narrative Rate Approach

The “narrative rate approach” expresses the field-specific rate of application as a narrative rate prescribing how to calculate the amount of manure, litter, and process wastewater

allowed to be applied. This approach results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied according to the following specifications:

(A) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the Director, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms must include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with paragraph (ii)(B) of this section); the realistic yield goal for each crop or use identified for each field, and the nitrogen and phosphorus recommendations from EPA approved sources (see below) for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan, credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field, the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

EPA approved sources for nitrogen and phosphorus crop recommendations include the New Mexico NRCS, New Mexico State University, or an equivalent source.

(B) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field and the nutrient management plan must include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the Director for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied must be determined in accordance with the methodology described in (ii)(A) of this section.

(C) For CAFOs using this approach the following projections must be included in the nutrient management plan submitted to the Director, but are not terms of the nutrient management plan: the CAFO's planned crop rotations for each field for the period of permit coverage, the projected amount of manure, litter, or process

wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application: accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

- (D) CAFOs that use this approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in paragraph (ii)(A) of this section before land applying manure, litter, and process wastewater and must rely on the following data;
- (1) a field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required in paragraph (ii)(A) of this section, and for phosphorus, the result of the most recent soil test conducted in accordance with soil testing requirements approved by the Director; and
 - (2) the results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied. [122.42(e)(5)(ii)]

EPA Region 6 has determined that the New Mexico State University Soil Test Interpretation Report (590 Nutrient Management Jobsheet) (see <http://www.nm.nrcs.usda.gov/technical/water/nmafo.html>) and the Manure Management Planner (see <http://www.agry.purdue.edu/mmp>) are acceptable processes for developing a narrative rate approach in New Mexico.

- (iii) Identify and maintain all records necessary to document the development and implementation of the NMP and compliance with the permit. [40 CFR 122.42(e)(5)(ix)]

Changes from Proposed Permit: EPA received a comment which stated that the permit should require the operator to submit a site map, including the production and land application areas, flow direction, outline of drainage areas to the process wastewater retention or control structures, structural controls, and surface water bodies. In response to this comment, Part III.A.3.h has been added to the permit and requires that the NMP include site maps of the production and land application areas.

4. Signature. The NMP shall be signed by the owner/operator or other signatory authority in accordance with Part VI.E (Signatory Requirements) of this permit. [40 CFR 122.41(k)]
5. A current copy of the NMP shall be kept on-site at the permitted facility in accordance with Part IV.C of this permit and provided to the permitting authority upon request. [40 CFR

412.37(c)]

6. Changes to the NMP

- a. The general permit recognizes that a CAFO owner or operator may need to make changes to its NMP. When a CAFO owner or operator covered by this general permit makes changes to the CAFO's NMP previously submitted to the Director, the CAFO owner or operator must provide the Director with the most current version of the CAFO's NMP and identify changes from the previous version. [40 CFR 122.42(e)(6)(i)]
- b. The Director will review the revised NMP. If the Director determines that the changes to the NMP require revision of the terms of the NMP incorporated into the permit issued to the CAFO, the Director must then determine whether such changes are substantial. [40 CFR 122.42(e)(6)(ii)] Substantial changes to the terms of a NMP incorporated as terms and conditions of a permit include, but are not limited to: [40 CFR 122.42(e)(6)(iii)]
 - (i) Addition of new land application areas not previously included in the CAFO's NMP, except that if the added land application area is covered by the terms of a NMP incorporated into an existing NPDES permit and the permittee complies with such terms when applying manure, litter, and process wastewater to the added land; [40 CFR 122.42(e)(6)(iii)(A)]
 - (ii) For NMPs using the Linear Approach, changes to the field-specific maximum annual rates of land application (pounds of N and P from manure, litter, and process wastewater). For NMPs using the Narrative Rate Approach, changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop; [40 CFR 122.42(e)(6)(iii)(B)]
 - (iii) Addition of any crop or other uses not included in the terms of the CAFO's NMP; and [40 CFR 122.42(e)(6)(iii)(C)]
 - (iv) Changes to site specific components of the CAFO's NMP, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the U.S. [40 CFR 122.42(e)(6)(iii)(D)]
- c. If the changes to the terms of the NMP are not substantial, the Director will include the revised NMP in the permit record, revise the terms of the permit based on the site specific NMP, and notify the permittee and the public of any changes to the terms of the permit based on revisions to the NMP. [40 CFR 122.42(e)(6)(ii)(A)]
- d. If the Director determines that the changes to the terms of the NMP are substantial, the Director will notify the public, make the proposed changes and make the information submitted by the CAFO owner or operator available for public review and comment, and respond to all significant comments received during the comment period. The Director

may require the permittee to further revise the NMP, if necessary. Once the Director incorporates the revised terms of the NMP into the permit, the Director will notify the permittee of the revised terms and conditions of the permit. [40 CFR 122.42(e)(6)(ii)(B)]

7. Requirements associated with nutrient management plan implementation

- a. Permittee must have adequate storage of manure, litter, and process wastewater. [40 CFR 122.42(e)(1)(i)]
- b. Clean water must be diverted. [40 CFR 122.42(e)(1)(iii)]
- c. Chemicals and other contaminants handled on-site may not be disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants. [40 CFR 122.42(e)(1)(v)]
- d. Manure, litter and process wastewater testing. [40 CFR 122.42(e)(1)(vii)]

Changes from Proposed Permit: EPA received comments that proposed modifications to the permit language to require manure sampling and analysis to be conducted prior to land application and in accordance with the NMP. The proposed modifications deleted the requirement to sample as close to the time of application as possible and the requirement to collect separate samples from each manure storage site. The commenters suggested manure should be sampled at least annually and prior to application. One commenter suggested replacing the requirement for collecting separate manure samples from each storage site with language requiring that manure samples be representative of current operational conditions and that additional samples be analyzed where operational changes have been made that may affect the nutrient characteristics of the manure.

In response to these comments, EPA has modified the permit to require that manure sampling and analysis be conducted annually prior to the first land application event for each year of permit coverage. EPA also recognizes that the need for separate samples taken from each manure storage site is dependent on site-specific factors. EPA believes that this should be addressed in the representative sampling protocol established in the NMP, and has removed the separate sample requirement from the permit itself. EPA supports the use of NM NRCS, NMED, or New Mexico State University Extension manure sampling guidance, if available.

- e. Soil testing. [40 CFR 122.42(e)(1)(vii)]
 - f. CAFOs using the Narrative Approach. [40 CFR 122.42(e)(5)]
8. Certified Specialists to Develop NMPs. EPA promotes and supports the use of certified specialists to develop or modify NMPs, which will help to ensure the quality of NMPs. EPA encourages CAFO owners/operators to use these certified specialists to prepare their NMPs.

Although a certified specialist may be used, CAFO owners/operators are solely responsible for assuring their NMPs comply with all permit conditions and are properly implemented.

Changes from Proposed Permit: *In New Mexico Environment Department's (NMED) pre-certification letter dated February 20, 2009, NMED provided the following condition of certification (summarized here):*

NMED Surface Water Quality Bureau (SWQB) believes that there is reasonable potential under this permit for discharges to exceed water quality standards (WQS), including general standards, unless best management practices (BMPs) incorporated in the nutrient management plan (NMP) are developed by qualified personnel. Therefore, CAFOs located in New Mexico (except Indian Country) must use a "Certified Conservation Planner – CNMP" and "Certified Specialists – CNMP" to develop and/or modify the NMP required by the permit, and the NMP must include documentation that the person who developed and/or modified the NMP met the qualification of a certified planner/specialist. NMP planners must be certified by New Mexico USDA-NRCS or a USDA-NRCS sanctioned organization as a "Certified Conservation Planner – CNMP" or an alternate, equivalent certification program developed by NMED.

Based on this condition of certification under section 401 of the Clean Water Act, Part III.A.8 of the permit has been changed to require the use of a certified specialist to develop, modify, review, and/or approve the nutrient management plan.

B. Facility Closure

Abandoned or improperly closed CAFOs pose a pollution threat to surface water and groundwater that can be significant for large facilities and increases due to a lack of proper maintenance and management. Part III.B of the General Permit addresses requirements for closure of containment basins and other manure handling and wastewater facilities. These requirements are contained in the example CAFO permit contained in Appendix J in EPA's December 31, 2003, NPDES Permit Writers' Guidance Manual and Example NPDES Permit for CAFOs. It should be noted that the State of New Mexico and the New Mexico NRCS also have closure plan requirements. Where possible, EPA has made efforts, such that any plan developed under one of these other requirements would meet the requirements established in the EPA CAFO General Permit. The permittee is responsible for assuring that all applicable requirements are met.

The CAFO general permit includes specific closure requirements for lagoons and other surface impoundments, as well as for other manure, litter and process wastewater storage and handling facilities. Under the general permit, no such facilities may be abandoned and each must be properly closed as promptly as practicable upon ceasing operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of twelve consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either: (1) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or (2) removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic

or earthen liner. In either case, the permittee must notify EPA of the action taken, and must conduct routine inspections, maintenance, and record keeping as though the structure were in use. Prior to restoration of use of the structure, the permittee shall notify EPA and provide the opportunity for inspection.

All closure of lagoons and other earthen or synthetic lined basins must be consistent with New Mexico NRCS Conservation Practice Standard Code 360 (Closure of Waste Impoundments). Consistent with this standard the permittee must remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittee's nutrient management plan, unless otherwise authorized by EPA.

Closure of all other manure, litter, or process wastewater storage and handling structures must occur as promptly as practicable after the permittee has ceased to operate, or, if the permittee has not ceased to operate, within 12 months after the date on which the use of the structure ceased. To close a manure, litter, or process wastewater storage and handling structure, the permittee must remove all manure, litter, or process wastewater and dispose of it in accordance with the permittee's nutrient management plan, or document its transfer from the permitted facility in accordance with off-site transfer requirements specified in Part III.C of the proposed permit, unless otherwise authorized by the EPA. [40 CFR 122.23(h)]

C. Requirements for the Transfer of Manure, Litter, and Process Wastewater to Other Persons

Under the CAFO general permit, where CAFO-generated manure, litter, or process wastewater is sold or given away the permittee must comply with specific requirements that document the transaction and promote proper management. These requirements are based on 40 CFR 122.42(e)(3) and the expired permit. These include the following conditions:

- a. The permittee must maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted operation;
- b. The permittee must maintain records of the name and address of the recipient;
- c. The permittee must provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater; and
- d. These records must be retained on-site, for a period of five years, and be submitted to the permitting authority upon request.

The CAFO general permit does not establish requirements for off-site management of CAFO generated manure, litter, or process wastewater. However, the Director can use the documentation specified above to ensure proper management of such materials as appropriate.

Changes from Proposed Permit: EPA received comments suggesting the inclusion of an

exception to the manure transfer record keeping requirements for small amounts transferred (less than 10 tons per year to a single recipient, or manure transferred in small loads; incidental amounts given away by pick-up truck load). In response to these comments, EPA has modified Part III.C to state that amounts less than 10 tons per year to a single recipient need not be recorded.

D. Additional Special Conditions

The proposed permit requirements in Part III.D, except for Part III.D.8, were contained in the expired permit and are being continued in the current proposal in accordance with 40 CFR 122.44(1).

Changes from Proposed Permit: EPA received comments addressing Parts III.D.1.a and b, which requires documentation (direct hydrologic connection) by an NRCS engineer or a P.E. However, Part III.D.1.c allows some documentation (liner maintenance and periodic site evaluation) to be done by a P.E. or a qualified groundwater scientist. One commenter asserted that these latter evaluations should be done by an NRCS engineer or a New Mexico P.E. Another commenter requested that the list of persons who may document no direct hydrologic connection include “qualified groundwater scientists,” consistent with the 1993 permit. In response to these comments, EPA has modified Part III.D.1.c to state that any mechanical or structural damage to the liner must be evaluated by a NRCS Engineer or Professional Engineer and that the permittee shall have a NRCS Engineer or Professional Engineer review documentation.

EPA also received comments which stated that based on the Second Circuit Court’s decision in *Waterkeeper et al. v EPA* EPA does not have the authority to require CAFOs to apply for a permit based on a potential discharge. One commenter asserted that EPA also does not have the authority to require a CAFO to install a leak detection system or monitoring wells based on the potential for contamination of surface waters or drinking water. Such a system can only be required where monitoring data show a hydrologic connection from an improperly lined lagoon to a water of the United States. Another commenter noted that installing leak detection systems or monitoring wells if a potential exists for contamination of surface waters or drinking water may not be feasible in some circumstances and would create a financial burden. EPA should allow “other investigative devices or methods” to be used. In response to these comments, the infiltration monitoring requirement of Part III.D.1.c has been modified to be based on a direct hydrological connection to waters of the United States. EPA has also modified this section to allow for other appropriate measures to be used in lieu of leak detection systems or monitoring wells.

EPA received additional comments that questioned the need or authority for a provision related to “spills” since the general permit regulates discharges to waters of the United States, rather than spills that are contained on site at the CAFO. One commenter proposed including permit language requiring spill remediation and documentation to replace the reporting requirement in the draft general permit. In response to these comments, EPA has removed the reporting requirement from Part III.D.3 of the permit and replaced it with a requirement to document

spills and clean-up activity.

EPA received a comment noting that Part III.D.3 of the proposed permit does not include a requirement to provide a list of significant materials or a requirement to document materials handling and storage procedures in the NMP. In all cases, if significant materials are used, stored or disposed, spills should be addressed. Materials handling procedures and storage must be specified in the NMP. The permit should require that all spills and cleanup be documented. In response to this comment, Part III.D.3 of the permit has been modified to state that handling procedures and storage for any toxic and other pollutants must be specified in the NMP. As previously stated, EPA has also removed the reporting reference to Part IV of the permit and replaced it with a requirement to document spills and clean-up activity

Part III.D.8 of the proposed permit will contain requirements to address the protection of endangered or threatened species in the permit area. EPA and the U.S. Fish & Wildlife Service (FWS) are engaged in informal consultation on the permit under Section 7(a)(2) of the Endangered Species Act (ESA). FWS has suggested that two circumstances might adversely affect listed species and/or designated critical habitat and EPA has included conditions in the draft permit addressing each of those concerns.

First, the draft permit requires that CAFO operations in the counties of Bernalillo, Chavez, Eddy, Sandoval, San Juan and Valencia develop and implement an Emergency Action Plan (EAP). The EAP should include reasoned procedures to be implemented in the event of a release or spill at a facility that might reach and subsequently harm listed threatened and endangered species or designated critical habitat. The goal of the EAP is to prevent to the extent possible any spills or releases from migrating off the site. Guidance on development of a CNMP is available from the NRCS, which independently already requires that they be included in CNMPs. EPA's draft permit provision requires that the same EAP be submitted to EPA for review as an element of the NMP.

The minimum requirements for an EAP include immediate notification of State and Federal wildlife agencies and the New Mexico Environment Department if any dead or injured wildlife are found. Additionally, the EAP must identify the BMP(s) that shall be implemented immediately to minimize the likelihood of an accident, leak, spill or permitted discharge from entering waters of the U.S. occupied by threatened or endangered species or their critical habitat. BMPs developed and implemented must adhere with state law. Suggested BMP(s) to reach this goal may include, but are not limited to:

- an emergency runoff discharge abatement area;
- a storage lagoon or other lined storage area with additional capacity;
- a contingency plan to immediately pump out and create additional storage (avoiding land application where pumped material runoff might reach off into receiving stream);
- implementation of a CNMP according to the USDA Natural Resources Conservation Service guidelines;
- additional constructed wetland or other adequate waste treatment units; or

- other watershed practices that are capable of reducing discharges from reaching waters of the U.S. that are occupied by threatened or endangered species (e.g., facility setbacks, berms, filter strips, emergency response barriers, etc.).

The second potential concern identified in informal consultation arises from trace elements in manure, including selenium, copper, and zinc that often are added to animal feed and may thus become pollutants of concern in land applied lagoon wastewater and sludge. EPA has utilized its Sample Farm model to estimate metals loadings (USEPA, 2002) and notes that manure applied to land at nitrogen-based application rates meets or exceeds annual urban loadings of zinc and copper. The draft permit nevertheless requires that CAFO operators implement once per permit soil testing at land application sites. Data obtained in such sampling could prove helpful in the next permit reissuance and, in some cases, might lead EPA to request a CAFO operator to request an individual permit.

EPA's consultation with FWS is currently incomplete and the two draft permit requirements may be altered or deleted as a result of further consultation. Public comment is invited on both requirements.

Changes from Proposed Permit: EPA received a comment requesting clarification of the ESA notification requirements of Part III.D.5 and Part III.D.8.a. In response to this comment, EPA has removed the notification requirement from Part III.D.8.a and will rely on the notification requirement of Part III.D.5, which applies to all permittees.

EPA has modified Part III.D.5 of the permit to clarify that notification is required if any dead or injured threatened or endangered species or protected migratory birds are observed in or on receiving waters following a discharge or on the facility's land application areas at any time. Under some circumstances, agricultural or waste treatment system operations "take" birds protected under the Migratory Bird Treaty Act or animals listed as endangered or threatened under the Endangered Species Act and may thus violate federal law. See, e.g., United States v. FMC Corporation, 742 F.2d 902 (2d Cir. 1978) United States v. Rollins, 706 F.Supp. 742 (D. Idaho 1989). This permit provision enables investigation of situations in which such takes may have occurred and implementation of corrective actions as necessary and/or appropriate. EPA has also been added to the list of agencies that must be notified in the event of any dead or injured threatened or endangered species or protected migratory birds.

IV. DISCHARGE MONITORING AND NOTIFICATION REQUIREMENTS

A. Notification of Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport and Application

The general permit provides that in the event of a discharge of pollutants to a water of the United States, the permittee is required to make immediate oral notification within 24-hours to the EPA Region 6, Compliance and Assurance Division, Water Enforcement Branch (6EN-W), Dallas,

Texas at 214-665-6595, and notify EPA and NMED in writing within fourteen (14) working days of the discharge from the facility. In addition, the permittee must keep a copy of the notification submitted to EPA together with the other records required by this permit. The discharge notification must include: 1) A description of the discharge and its cause, including a description of the flow path to the receiving water body and an estimate of the flow and volume discharged; and 2) The period of non-compliance, including exact dates and times, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent recurrence of the discharge. This reporting requirement is a standard permit condition under 40 CFR 122.41(l)(6). Note that runoff that meets the criteria of the agricultural stormwater exemption does not constitute a point source discharge.

***Changes from Proposed Permit:** EPA received a comment requesting the addition of language to require CAFOs to orally report discharges to New Mexico Environment Department. In response to this comment, EPA has modified Part IV.A of the permit to require CAFOs to orally report the discharge of pollutants to waters of the United States to NMED.*

B. Monitoring Requirements for All Discharges from Retention Structures

The CAFO general permit provides that in the event of any overflow or other discharge of pollutants from a manure and/or wastewater storage or retention structure, whether or not authorized by this permit, all discharges must be sampled and analyzed, and an estimate of the volume of the release and the date and time must be recorded. [40 CFR 122.41(j)]

Samples must, at a minimum, be analyzed for the following parameters: total nitrogen, nitrate nitrogen, ammonia nitrogen, total phosphorus, *E. coli* bacteria, five-day biochemical oxygen demand (BOD₅), total suspended solids, pH, and temperature. The discharge must be analyzed in accordance with approved EPA methods for water analysis listed in 40 CFR Part 136. [40 CFR 122.41]

The expired Region 6 CAFO general permit required monitoring for ammonia nitrogen, fecal coliform bacteria, five-day biochemical oxygen demand (BOD₅), and total suspended solids (TSS). All of these pollutants, with the exception of fecal coliform bacteria, are retained in the proposed permit. Fecal coliform bacteria have been replaced with *E. coli* bacteria in the New Mexico Water Quality Standards and this change is reflected in the proposed permit. Total phosphorus, nitrate nitrogen, and total nitrogen have been added to the proposed permit to address high levels of nutrients in wastewater contained in CAFO retention structures and their potential to impact water quality. Temperature and pH have been added to this monitoring requirement to recognize the influence of these parameters on ammonia nitrogen toxicity.

If conditions are not safe for sampling, the permittee must provide documentation of why samples could not be collected and analyzed. For example, the permittee may be unable to collect samples during dangerous weather conditions (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). However, once dangerous conditions have passed, the permittee shall collect a sample from the retention structure (pond or lagoon) from which the discharge occurred.

[40 CFR 122.41]

C. General Inspection, Monitoring, and Record keeping Requirements

Under the general permit, the permittee shall inspect, monitor, and record the results of such inspection and monitoring in accordance with Table IV–A:

Table IV-A NPDES Large CAFO Permit Record Keeping Requirements		
Parameter	Units	Frequency
Permit and Nutrient Management Plan <i>(Note: Required by the NPDES CAFO Regulation – applicable to all CAFOs)</i>		
The CAFO must maintain on-site a copy of the current NPDES permit, including [specify mechanism to identify site specific terms].	N/A	Maintain at all times
The CAFO must maintain on-site a current site specific NMP that reflects existing operational characteristics. The operation must also maintain on-site all necessary records to document that the NMP is being properly implemented with respect to manure and wastewater generation, storage and handling, and land application. In addition records must be maintained that the development and implementation of the NMP is in accordance with the minimum practices defined in 40 CFR 122.42(e).	N/A	Maintain at all times
Soil and Manure/Wastewater Nutrient Analysis <i>(Note: Required by the CAFO ELG – applicable to Large CAFOs)</i>		
Analysis of manure, litter, and process wastewater to determine nitrogen and phosphorus content. ¹	ppm Pounds/ton	At least annually after initial sampling
Analysis of soil in all fields where land application activities are conducted to determine phosphorus content. ¹	ppm	At least once every 5 years after initial sampling
Operation and Maintenance <i>(Note: Required by the CAFO ELG – applicable to Large CAFOs)</i>		
Visual inspection of all water lines	N/A	Daily ²
Documentation of depth of manure and process wastewater in all liquid impoundments	Feet	Weekly
Documentation of all corrective actions taken. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction.	N/A	As necessary
Documentation of animal mortality handling practices	N/A	As necessary
Design documentation for all manure, litter, and wastewater storage structures including the following information: <ul style="list-style-type: none"> • Volume for solids accumulation • Design treatment volume • Total design storage volume³ • Days of storage capacity 	Cubic yards/gallons Cubic yards/gallons Cubic yards/gallons Days	Once in the permit term unless revised

Documentation of all overflows from all manure and wastewater storage structures including: <i>(Note: Required by the NPDES Regulation – applicable to all CAFOs)</i>		
• Date and time of overflow	Month/day/year	Per event
• Estimated volume of overflow	Total gallons	Per event
• Analysis of overflow (as required by the Permitting Authority)	ppm	Per event
Land Application <i>(Note: Required by the CAFO ELG – applicable to Large CAFOs)</i>		
For each application event where manure, litter, or process wastewater is applied, documentation of the following by field:		
• Date of application	Month/day/year	Daily
• Method of application	N/A	Daily
• Weather conditions at the time of application and for 24 hours prior to and following application	N/A	Daily
• Total amount of nitrogen and phosphorus applied ⁴	Pounds/acre	Daily
Documentation of the crop and expected yield for each field	Bushel/acre	Seasonally
Documentation of the actual crop planted and actual yield for each field		
Documentation of test methods and sampling protocols used to sample and analyze manure, litter, and wastewater and soil.	N/A	Once in the permit term unless revised
Documentation of the basis for the application rates used for each field where manure, litter, or wastewater is applied.	N/A	Once in the permit term unless revised
Documentation showing the total nitrogen and phosphorus to be applied to each field including nutrients from the application of manure, litter, and wastewater and other sources	Pounds/acre	Once in the permit term unless revised
Documentation of manure application equipment inspection	N/A	Seasonally
Manure Transfer <i>(Note: Required by the NPDES CAFO Regulation – applicable to Large CAFOs)</i>		
For all manure transfers the CAFO must maintain the following records:		
• Date of transfer	N/A	As necessary
• Name and address of recipient	N/A	As necessary
• Approximate amount of manure, litter, or wastewater transferred	Tons/gallons	As necessary
¹ Refer to the state nutrient management technical standard for the specific analyses to be used. ² Visual inspections should take place daily during the course of normal operations. The completion of such inspection should be documented in a manner appropriate to the operation. Some operations may wish to maintain a daily log. Other operations may choose to make a weekly entry, when they update other weekly records, that required daily inspections have been completed. ³ Total design volume includes normal precipitation less evaporation on the surface of the structure for the storage period, normal runoff from the production area for the storage period, 25-year, 24-hour precipitation on the surface of the structure, 25-year, 24-hour runoff from the production area, and residual solids. ⁴ Including quantity/volume of manure, litter, or process wastewater applied and the basis for the rate of phosphorus application.		

[40 CFR 122.42(e)(2) and (3); 40 CFR 412.37(b) and (c)]

V. ANNUAL REPORTING

Under the general permit, the permittee must submit an annual report to EPA and NMED. The first annual report shall be submitted on the 28th day of the 12th month after the permittee's NOI was submitted for coverage under this general permit, and every 12 months, thereafter. The requirement and criteria for the annual report are specified in 40 CFR 122.42(e)(4).

The annual report must include the following information:

- a. The number and type of animals, whether in open confinement or housed under roof;
- b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- c. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);
- d. Total number of acres for land application covered by the NMP;
- e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;
- f. Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume;
- g. A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner;
- h. Actual crops planted and actual yields for each field for the preceding 12 months;
- i. Results of all samples of manure, litter or process wastewater for nitrogen and phosphorus content for manure, litter and process wastewater that was land applied;
- j. Results of calculations conducted in accordance with Parts III.A.3.h.i(B) (for the Linear Approach) and III.A.3.h.ii(C) (for the Narrative Rate Approach);
- k. Amount of manure, litter, and process wastewater applied to each field during the preceding 12 months, and;
- l. For CAFOs using the Narrative Rate Approach to address rates of application:
 - The results of any soil testing for nitrogen and phosphorus conducted during the preceding 12 months.
 - The data used in calculations conducted in accordance with Part III.A.3.h.ii(C).

- The amount of any supplemental fertilizer applied during the preceding 12 months.

Changes from Proposed Permit: EPA received comments which suggested that basing each CAFO's annual report due date on the NOI submittal date could be confusing and overly burdensome to producers that have multiple operations with different due dates. One commenter recommends that the producer be allowed to determine the reporting timeframe. Both commenters supported a requirement that all annual reports be due at the same time every year. In response to this comment, EPA has modified the permit to require that annual reports be submitted to EPA and NMED on January 31.

VI. STANDARD CONDITIONS

This NPDES General Permit for CAFOs incorporates the standard conditions applicable to all permits issued under the NPDES program. These conditions consist of: general conditions, proper operation and maintenance, monitoring and records, reporting requirements, signatory requirements, certification, availability of reports, and penalties for violations of permit conditions. Additional information on each of these standard permit conditions is contained in Section VI of the general permit [40 CFR Part 122.41].

EPA would like to note that permit requirement 10.e has been added to Part VI.A of the permit. This provision is based on Part III(I)(v) of the expired CAFO permit, which stated that if a properly operated facility, which was in danger of imminent overflow due to chronic or catastrophic rainfall, could discharge wastewater to land application sites for filtering prior to discharging to waters of the U.S.

Changes from Proposed Permit: EPA received a comment stating that provisions VI.B.1 and 2 are repetitive of provisions VI.A.13 and 14 and provision VI.C.1.c is repetitive of the requirement in VI.A.15; all of these repetitive provisions should be deleted. The commenter suggested that provision VI.B.3 be renumbered as VI.A.16 and Part VI.B be deleted. In response to this comment, Parts VI.B.1, VI.B.2, and VI.C.1 have been removed from the permit. Parts VI.A.13 and VI.A.14 have been modified to capture necessary language from Parts VI.B.1 and VI.B.2. Part VI.B.3 has been renumbered as Part VI.B as opposed to moving the provision to Part VI.A and deleting Part VI.B.

VII. OTHER LEGAL REQUIREMENTS

A. EPA's Approach to Compliance with the Regulatory Flexibility Act for General Permits

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small

entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The legal question of whether a general permit (as opposed to an individual permit) qualifies as a “rule” or as an “adjudication” under the Administrative Procedure Act (APA) has been the subject of periodic litigation. In a recent case, the court held that the CWA Section 404 Nationwide general permit before the court did qualify as a “rule” and therefore that the issuance of that general permit needed to comply with the applicable legal requirements for the issuance of a “rule.” *National Ass’n of Home Builders v. US Army Corps of Engineers*, 417 F.3d 1272, 1284-85 (DC Cir.2005) (Army Corps general permits under Section 404 of the Clean Water Act are rules under the APA and the Regulatory Flexibility Act; “Each NWP [nationwide permit] easily fits within the APA’s definition ‘rule.’ . . . As such, each NWP constitutes a rule . . .”).

As EPA stated in 1998, “the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit.” 63 FR 36489, 36497 (July 6, 1998). At that time, EPA “reviewed its previous NPDES general permitting actions and related statements in the Federal Register or elsewhere,” and stated that “[t]his review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits.” *Id.* at 36496. Based on EPA’s further legal analysis of the issue, the Agency “concluded, as set forth in the proposal, that NPDES general permits are permits [i.e., adjudications] under the APA and thus not subject to APA rulemaking requirements or the RFA.” *Id.* Accordingly, the Agency stated that “the APA’s rulemaking requirements are inapplicable to issuance of such permits,” and thus “NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law . . . [and] it is not subject to the RFA.” *Id.* at 36497.

However, the Agency went on to explain that, even though EPA had concluded that it was not legally required to do so, the Agency would voluntarily perform the RFA’s small-entity impact analysis. *Id.* EPA explained the strong public interest in the Agency following the RFA’s requirements on a voluntary basis: “[The notice and comment] process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities.” *Id.* Accordingly, with respect to the NPDES permit that EPA was addressing in that Federal Register notice, EPA stated that “the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied.” *Id.*

Subsequent to EPA’s conclusion in 1998 that general permits are adjudications rather than rules, as noted above, the DC Circuit recently held that Nationwide general permits under section 404 are “rules” rather than “adjudications.” Thus, this legal question remains “a

difficult one” (*supra*). However, EPA continues to believe that there is a strong public policy interest in EPA applying the RFA’s framework and requirements to the Agency’s evaluation and consideration of the nature and extent of any economic impacts that a CWA general permit could have on small entities (e.g., small businesses). In this regard, EPA believes that the Agency’s evaluation of the potential economic impact that a general permit would have on small entities, consistent with the RFA framework discussed below, is relevant to, and an essential component of, the Agency’s assessment of whether a CWA general permit would place requirements on dischargers that are appropriate and reasonable. Furthermore, EPA believes that the RFA’s framework and requirements provide the Agency with the best approach for the Agency’s evaluation of the economic impact of general permits on small entities. While using the RFA framework to inform its assessment of whether permit requirements are appropriate and reasonable, EPA will also continue to ensure that all permits satisfy the requirements of the Clean Water Act. Accordingly, EPA has committed to operating in accordance with the RFA’s framework and requirements during the Agency’s issuance of CWA general permits (in other words, the Agency has committed that it will apply the RFA in its issuance of general permits as if those permits do qualify as “rules” that are subject to the RFA).

B. Application of RFA Framework to Proposed Issuance of CAFO General Permit for New Mexico (except Indian Country)

EPA has determined, consistent with the discussion in Section IV.B above, that the proposed issuance of today’s proposed permit would not affect a substantial number of small entities. Although general permits are considered to be adjudications and not rules and therefore not legally subject to the regulatory flexibility act, the Agency as a matter of policy is evaluating on an individual bases whether or not a specific general permit would have a significant economic impact on a substantial number of small entities. Upon considering EPA’s current guidance, entitled Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement and Fairness Act, EPA concludes that since this general permit affects less than 100 small entities at any one time, EPA believes that it does not have a significant economic impact on a substantial number of small entities.

this ICR. In the previous ICR, the cost figure was rounded-up to the nearest thousand. In this ICR, the figure is rounded to the nearest dollar.

Dated: July 29, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9-18589 Filed 8-3-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8940-1]

Notice of Final NPDES General Permit for Discharges From Concentrated Animal Feeding Operations (CAFOs) in New Mexico (NMG010000)

AGENCY: Environmental Protection Agency (EPA), Region 6.

ACTION: Notice of NPDES General Permit Reissuance.

SUMMARY: EPA Region 6 today issues a National Pollutant Discharge Elimination System general permit for discharges from eligible owners/operators of existing concentrated animal feeding operations (CAFOs), in New Mexico, except those discharges on Indian Country. All currently operating animal feeding operations that are defined as CAFOs or designated as CAFOs by the permitting authority (See part VII Definitions, "CAFOs") and that are subject to 40 CFR part 412, subparts A (Horses) and C (Dairy Cows and Cattle Other than Veal Calves) are eligible for coverage under this permit. This permit covers the types of animal feeding operations listed above which meet the definition of a CAFO and discharge or propose to discharge pollutants to waters of the United States. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur.

A copy of the Region's responses to comments and the final permit may be obtained from the EPA Region 6 Internet site: <http://www.epa.gov/region6/water/npdes/cafo/index.htm>.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, Water Quality Protection Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone: (214) 665-2145, or via e-mail at: smith.diane@epa.gov.

SUPPLEMENTARY INFORMATION:

Summary of Significant Changes From the Draft Permit

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. section 1342, EPA proposed and solicited comments on NPDES general permit

NMG010000 at 74 FR 3592 (January 21, 2009). The comment period closed on February 20, 2009.

Region 6 received comments from the New Mexico Environment Department, US Fish and Wildlife Service, Bureau of Reclamation, New Mexico Department of Agriculture, Dairy Producers of New Mexico, Seaboard Foods, Oklahoma Farm Bureau, Texas Cattle Feeders Association, Oklahoma Pork Council, and Amigos Bravos.

EPA Region 6 has considered all comments received. In response to those comments the following significant changes were made to the proposed permit.

1. Based on NMED condition of certification under section 401 of the Clean Water Act, part III.A.8 of the permit has been changed to require the use of a certified specialist to develop, modify, review, and/or approve the nutrient management plan.

2. Part III.A.3.h has been added to the permit to require that the nutrient management plan (NMP) include site maps of the production and land application areas.

3. Part II.A.2.a.x has been modified to include the term "as appropriate." Part II.A.2.a.x and part III.A.3.b have also been modified to clarify that retention structures must include adequate storage capacity for clean water that is not diverted.

4. EPA has removed part III.A.3.f.i-iv from the permit and has modified part III.A.3.f to require that the NMP include any additional information necessary to assess the adequacy of the application rates included in the NMP.

5. EPA has modified part III.A.7.d of the permit to require that manure sampling be conducted annually prior to the first land application event of each year of permit coverage and to allow for representative sampling protocols to be established in the NMP.

6. The spills reporting requirement has been removed from part III.D.3 of the permit and was replaced with a requirement to document spills and clean-up activity.

7. Part III.D.3 of the permit has been modified to state that handling procedures and storage for any toxic and other pollutants must be specified in the NMP.

8. EPA has modified part III.D.1.c to state that any mechanical or structural damage to the liner must be evaluated by a Natural Resources Conservation Service (NRCS) Engineer or Professional Engineer and that the permittee shall have a NRCS Engineer or Professional Engineer review documentation.

9. The infiltration monitoring requirement of part III.D.1.c has been

modified to be based on a direct hydrological connection to waters of the United States. EPA has also modified this section to allow for other appropriate measures to be used in lieu of leak detection systems or monitoring wells.

10. EPA has modified the permit to require that annual reports be submitted to EPA and NMED on January 31 as opposed to basing the due date on the NOI submittal date.

11. Parts VI.B.1, VI.B.2, and VI.C.1 have been removed from the permit as they are repetitive of provisions found elsewhere in the permit.

12. EPA has added part I.H to address the procedure for a change in ownership.

13. The Water Quality-Based Reduction Plan requirement of part II.A.3.c has been removed from the permit.

14. EPA has modified part III.C to exclude amounts less than 10 tons per year to a single recipient from the transfer of manure, litter, and process wastewater recordkeeping requirement.

15. EPA has removed the notification requirement form part III.D.8.a and will rely on the notification requirement of part III.D.5, which has been modified to require notification within 48 hours.

16. The proposed corrective action requirement proposed as part II.A.3.d has been clarified to address discharges or proposed discharges to impaired waters and has been moved to part II.A.3.a.iv.

17. EPA has modified part IV.A of the permit to require CAFOs to orally report the discharge of pollutants to waters of the United States to NMED.

18. Part I.D.8 and part I.E.8 of the final permit have been amended to clarify that new sources must submit an Environmental Impact Document (EID), not a previous EPA National Environmental Policy Act (NEPA) review document, with their NOIs.

19. Part II.A.5.c has been amended to clarify that there shall be no unauthorized dry weather discharges from land application sites.

20. EPA has clarified part I.E.1.a.i to state that for any facility that received authorization to discharge under the 1993 CAFO general permit and complies with the 90-day NOI timeframe, authorization under the 1993 CAFO permit is automatically continued until coverage is granted under this permit or coverage is otherwise terminated.

21. EPA has amended part I.E.8 to clarify that the applicant must submit to EPA information describing an expansion so that EPA may determine if the expansion is a new source.

Revision to the Permit

EPA is through today's notice revising part I.E.6 of the proposed permit. The option to submit a notice of intent (NOI) and nutrient management plan (NMP) electronically via the EPA Region 6 Web site has been removed from the permit due to unforeseen technical problems. If at any time such a process is implemented by EPA Region 6 for CAFO general permits, CAFOs seeking permit coverage under this permit may use electronic submission.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: July 24, 2009.

Claudia V. Hosch,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E9-18588 Filed 8-3-09; 8:45 am]

BILLING CODE 6560-50-P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of establishment of a new system of records maintained on individuals; request for comments.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Farm Credit Administration (FCA) is publishing an amended system notice, which indicates that the agency is now maintaining information on building security.

DATES: You may send written comments on or before September 3, 2009. The FCA filed an amended System Report with Congress and the Office of Management and Budget on July 14, 2009. This notice will become effective without further publication on September 14, 2009 unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at reg-comm@fca.gov.

- *FCA Web site:* <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Robert Taylor, Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted but, for technical reasons, we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Bob Taylor, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4019, TTY (703) 883-4020, or

Jane Virga, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4071, TTY (703) 883-4020.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 that agencies publish a system of records notice in the **Federal Register** when there is a revision, change, or addition to the system of records. The notice reflects designated points of contact for inquiring about the system, accessing the records, and requesting amendments to the records.

The amended system of records is: FCA-17, Organization Locator and Personnel Roster. As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, the FCA has sent notice of this proposed system of records to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate. The notice is published in its entirety below.

FCA-17

SYSTEM NAME:

Organization Locator and Personnel Roster System—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at the Farm Credit Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current FCA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Paper and electronic records. Includes information such as names; home addresses; telephone numbers; cell phone numbers; official titles or positions and organizations; photographs; building security zones; and other information associated with identifying and contacting personnel. Locator records of Agency personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSES:

To contact and recall personnel when required; locate personnel for routine and emergency matters; provide mail distribution and forwarding addresses; compile a social roster for official and non-official functions; send personal greetings and invitations; establish building security; and locate individuals during medical emergencies, facility evacuations, and similar threat situations. To identify Agency personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the "General Statement of Routine Uses."

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information stored in hard copy and electronically.

RETRIEVABILITY:

Retrievable by name.

SAFEGUARDS:

Access is limited to those whose official duties require access. File cabinets and rooms are locked during non-duty hours. Computers are protected by firewalls and passwords.

RETENTION AND DISPOSAL:

In accordance with National Archives and Records Administration General Records schedule requirements.

No Discharge Certification Form for Concentrated Animal Feeding Operations (CAFOs)
in New Mexico and Oklahoma

In order to voluntarily certify that a CAFO does not discharge or propose to discharge, the CAFO owner or operator must complete and submit this form by certified mail or equivalent method of documentation to:

Dorothy Brown
U.S. Environmental Protection Agency, Region 6
Water Quality Protection Division
Planning and Analysis Branch (6WQ-NP)
1445 Ross Avenue
Dallas, TX 75202-2733

CONTACT INFORMATION:

Owner/Operator Name: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Telephone: _____

FACILITY ADDRESS:

Name: _____
Address: _____
City: _____ State: _____ Zip Code: _____
County: _____ Latitude: _____ Longitude: _____

The CAFO owner/operator must attach a statement to this form that describes the basis for the CAFO's certification that it satisfies the eligibility requirements identified in 40 CFR 122.23(i)(2).

I certify under penalty of law that I am the owner or operator of a concentrated animal feeding operation (CAFO), identified as _____ [Name of CAFO], and that said CAFO meets the requirements of 40 CFR 122.23(i). I have read and understand the eligibility requirements of 40 CFR 122.23(i)(2) for certifying that a CAFO does not discharge or propose to discharge and further certify that this CAFO satisfies the eligibility requirements. As part of this certification, I am including the information required by 40 CFR 122.23(i)(3). I also understand the conditions set forth in 40 CFR 122.23(i)(4), (5) and (6) regarding loss and withdrawal of certification. I certify under penalty of law that this document and all other documents required for this certification were prepared under my direction or supervision and that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons directly involved in gathering and evaluating the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Name (print): _____ Title: _____

Signature: _____ Date Signed: _____
Signature must be in accordance with the signatory requirement of 40 CFR 122.22.

**RESPONSE TO COMMENTS ON THE PROPOSED NATIONAL POLLUTANT
DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL PERMIT FOR
DISCHARGES FROM CONCENTRATED ANIMAL FEEDING OPERATIONS
(CAFOs) IN NEW MEXICO (NMG010000)**

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 6

RECEIVED ON THE SUBJECT DRAFT NPDES PERMIT IN ACCORDANCE WITH
REGULATIONS LISTED AT 40 CFR 124.17

SUBSTANTIAL CHANGES FROM DRAFT PERMIT

Change 1: Based on NMED condition of certification under section 401 of the Clean Water Act, Part III.A.8 of the permit has been changed to require the use of a certified specialist to develop, modify, review, and/or approve the nutrient management plan.

Change 2: Part III.A.3.h has been added to the permit to require that the nutrient management plan (NMP) include site maps of the production and land application areas.

Change 3: Part II.A.2.a.x has been modified to include the term “as appropriate.” Part II.A.2.a.x and Part III.A.3.b have also been modified to clarify that retention structures must include adequate storage capacity for clean water that is not diverted.

Change 4: EPA has removed Part III.A.3.f.i-iv from the permit and has modified Part III.A.3.f to require that the NMP include any additional information necessary to assess the adequacy of the application rates included in the NMP.

Change 5: EPA has modified Part III.A.7.d of the permit to require that manure sampling be conducted annually prior to the first land application event of each year of permit coverage and to allow for representative sampling protocols to be established in the NMP.

Change 6: The spills reporting requirement has been removed from Part III.D.3 of the permit and was replaced with a requirement to document spills and clean-up activity.

Change 7: Part III.D.3 of the permit has been modified to state that handling procedures and storage for any toxic and other pollutants must be specified in the NMP.

Change 8: EPA has modified Part III.D.1.c to state that any mechanical or structural damage to the liner must be evaluated by a Natural Resources Conservation Service (NRCS) Engineer or Professional Engineer and that the permittee shall have a NRCS Engineer or Professional Engineer review documentation.

Change 9: The infiltration monitoring requirement of Part III.D.1.c has been modified to be based on a direct hydrological connection to waters of the United States. EPA has also modified this

section to allow for other appropriate measures to be used in lieu of leak detection systems or monitoring wells.

Change 10: EPA has modified the permit to require that annual reports be submitted to EPA and NMED on January 31 as opposed to basing the due date on the NOI submittal date.

Change 11: Parts VI.B.1, VI.B.2, and VI.C.1 have been removed from the permit as they are repetitive of provisions found elsewhere in the permit.

Change 12: EPA has added Part I.H to address the procedure for a change in ownership.

Change 13: The Water Quality-Based Reduction Plan requirement of Part II.A.3.c has been removed from the permit.

Change 14: EPA has modified Part III.C to exclude amounts less than 10 tons per year to a single recipient from the transfer of manure, litter, and process wastewater recordkeeping requirement.

Change 15: EPA has removed the notification requirement from Part III.D.8.a and will rely on the notification requirement of Part III.D.5, which has been modified to require notification within 48 hours.

Change 16: The proposed corrective action requirement proposed as Part II.A.3.d has been clarified to address discharges or proposed discharges to impaired waters and has been moved to Part II.A.3.a.iv.

Change 17: EPA has modified Part IV.A of the permit to require CAFOs to orally report the discharge of pollutants to waters of the United States to NMED.

Change 18: Part I.D.8 and Part I.E.8 of the final permit have been amended to clarify that new sources must submit an Environmental Impact Document (EID), not a previous EPA National Environmental Policy Act (NEPA) review document, with their NOIs.

Change 19: Part II.A.5.c has been amended to clarify that there shall be no unauthorized dry weather discharges from land application sites.

Change 20: EPA has clarified Part I.E.1.a.i to state that for any facility that received authorization to discharge under the 1993 CAFO general permit and complies with the 90-day NOI timeframe, authorization under the 1993 CAFO permit is automatically continued until coverage is granted under this permit or coverage is otherwise terminated.

Change 21: EPA has amended Part I.E.8 to clarify that the applicant must submit to EPA information describing an expansion so that EPA may determine if the expansion is a new source.

STATE CERTIFICATION

Letter from Glenn Saums, Acting Chief, New Mexico Environment Department (NMED) to Miguel I. Flores (EPA), dated February 20, 2009.

DISCUSSION OF STATE CERTIFICATION

Conditions of Certification

(1) In New Mexico Environment Department's (NMED) pre-certification letter dated February 20, 2009, NMED provided the following condition of certification (summarized here):

NMED Surface Water Quality Bureau (SWQB) believes that there is reasonable potential under this permit for discharges to exceed water quality standards (WQS), including general standards, unless best management practices (BMPs) incorporated in the nutrient management plan (NMP) are developed by qualified personnel. Therefore, CAFOs located in New Mexico (except Indian Country) must use a "Certified Conservation Planner – CNMP" and "Certified Specialists – CNMP" to develop and/or modify the NMP required by the permit, and the NMP must include documentation that the person who developed and/or modified the NMP met the qualification of a certified planner/specialist. NMP planners must be certified by New Mexico USDA-NRCS or a USDA-NRCS sanctioned organization as a "Certified Conservation Planner – CNMP" or an alternate, equivalent certification program developed by NMED.

RESPONSE TO COMMENTS RECEIVED ON DRAFT PERMIT

EPA received a number of comments during the public comment period from January 21, 2009 to February 20, 2009.

EPA received letters or emails from the following individuals or entities:

New Mexico Environment Department (NMED) via mail date February 20, 2009
US Fish and Wildlife Service (USFWS) dated February 20, 2009
Bureau of Reclamation - Albuquerque Area Office (BR) dated February 20, 2009
New Mexico Department of Agriculture (NMDA) dated February 19, 2009
Dairy Producers of New Mexico (DPNM) via email dated February 20, 2009
Seaboard Foods (SF) via email dated February 20, 2009
Oklahoma Farm Bureau (OFB) via email dated February 20, 2009
Texas Cattle Feeders Association (TCFA) via email dated February 20, 2009
Oklahoma Pork Council (OPC) via email dated February 20, 2009
Amigos Bravos (AB) dated February 19, 2009

EPA has consolidated similar comments and categorized comments into the topic headings listed below.

PART I – PERMIT AREA AND COVERAGE

Comments Regarding Duty to Apply

Comment 1: The duty to apply provision in the permit (i.e., for CAFOs that discharge or propose

to discharge) is not sufficient to ensure that discharging CAFOs seek permit coverage and, thus, to protect water quality. The permit language is unclear regarding what constitutes a CAFO that “discharges or proposes to discharge.” Categories of Large CAFOs for which evidence of actual or proposed discharge is strong should be required to obtain permit coverage.

Response 1: The requirement in this permit for CAFOs that discharge or propose to discharge is derived from the recently revised NPDES CAFO regulation at 40 CFR 122.23(d)(1). 73 FR 70418 (Nov. 20, 2008). Comments regarding whether this is the appropriate requirement under the CWA for which CAFOs must seek permit coverage are beyond the scope of this general permit. The permit applicability and application provisions in the EPA general permit for CAFOs in New Mexico are fully consistent with these federal NPDES CAFO regulations. Under the general permit, a CAFO that discharges or proposes to discharge pollutants to waters of the United States must apply for NPDES permit coverage, and if eligible, may seek to be covered under the general permit.

For further discussion of the requirement for CAFOs that discharge or propose to discharge to seek permit coverage, see the preamble to the 2008 final CAFO rule at 73 FR 704,23-25.

Comment 2: EPA must require all CAFOs that claim not to discharge to demonstrate that they are non-discharging CAFOs. Section 308(a) of the Clean Water Act provides EPA with legal authority and establishes EPA’s duty to require CAFOs to submit information demonstrating that they do not discharge. The commenter asserted that the voluntary no discharge certification option in the 2008 final CAFO rule is ineffective and urges EPA to require a mandatory certification process for non-discharging CAFOs.

Response 2: The comment appears directed at the revised NPDES CAFO regulation (73 FR 70418), which became effective on December 22, 2008, rather than falling within the scope of the draft general permit for CAFOs in New Mexico. The opportunity for public comments to be submitted on the proposed voluntary no discharge certification option concluded April 7, 2008, after EPA published a Supplemental Notice of Proposed Rulemaking (73 FR 12,321). EPA cannot change the NPDES regulations through this permit. Consistent with the requirements of the federal NPDES regulations for CAFOs at 40 CFR 122.23(d), this permit requires CAFOs that discharge or propose to discharge to seek permit coverage, although any CAFOs eligible for coverage may choose to submit an NOI. This permit is consistent with the federal regulations in that it does not impose requirements on CAFOs that do not discharge or propose to discharge and therefore are not required to submit an NOI for coverage under this permit. EPA Region 6 can request information from such CAFOs on a case-by-case basis, as discussed below.

EPA agrees with the commenter that section 308 of the CWA confers on EPA broad authority and discretion to request information. However, EPA does not agree that the CWA mandates EPA to require all unpermitted CAFOs to certify that they do not discharge or propose to discharge. Rather, under section 308(a), the EPA Administrator has discretion to require information (including establishing and maintaining records and making reports) from “the owner or operator of a point source” as he may reasonably require; . . .”. “whenever” it is “required to carry out the objective” of the Act. Under section 308 and the NPDES program, permitting authorities have significant authority to collect information needed to determine CAFO compliance with the CWA. Section 308(a)(3). Neither the provisions of this general permit or the 2008 final rule limit this authority, which permitting authorities may use as they find reasonably necessary to ensure that all discharging CAFOs have NPDES permit coverage.

Comment 3: The commenter supports requiring permits only for CAFOs that discharge or propose to discharge.

Response 3: The comment has been noted in the administrative record.

Comments Regarding Transfer of Ownership

Comment 4: Two commenters requested the addition of language to Part I of the permit allowing permit coverage to be transferred with a transfer of ownership in circumstances where the change in ownership is the only change to the operation. Both commenters suggested that the new owners be required to report acquisition of the facility and state that they will continue to follow the NMP and permit conditions. One commenter more specifically suggested that the new owner be required to report (1) no changes to the facility, (2) concurrence with the information submitted in the previous owner's Notice of Intent, and (3) an understanding that the NMP will be followed. This language is necessary to ensure timely permit coverage for new owners of an existing operation where no structural or operational changes are proposed.

Response 4: EPA agrees with the commenters that the transfer of permit coverage should be allowed where no other changes to the NMP or terms of the permit are necessary. EPA has added Part I.H to allow for a minor modification of permit coverage due to a change in ownership as described in 40 CFR 122.63(d).

EPA would like to note that if permit coverage is not transferred, the current permittee must submit a Notice of Termination (NOT) to EPA in accordance with Part I.C. EPA has modified Part I.G of the permit to clarify that termination of permit coverage is not complete until EPA informs the facility that such a request has been granted.

Comments Regarding Limitations on Coverage

Comment 5: Coverage under the general permit should be made available to swine, duck, poultry and veal operations in the event that these types of operations are established in New Mexico during the permit term.

Response 5: EPA believes that it is appropriate to require individual permit coverage of duck, swine, poultry, and veal operations. No such operations are known to be located in New Mexico. While these operations could be established in New Mexico during the 5-year permit term they would be considered new sources. EPA believes that the most appropriate way to address the new source performance standards for CAFOs subject to 40 CFR 412.46 is on a case-by-case basis. The requirement for an individual permit is retained.

Comment 6: Three commenters expressed concern regarding the limitation for permit coverage for CAFOs discharging to Tier 3 waters. One commenter suggested that this limitation could be used as a "zoning" tool to prevent CAFOs from locating or operating in a watershed by petitioning to have receiving waters designated as Outstanding Natural Resource Waters. The commenters requested that EPA replace the existing limitation on permit coverage with language allowing CAFOs discharging to Tier 3 waters to be covered under the general permit if they prepare and

implement an Emergency Action Plan.

Response 6: Tier 3 waters are high quality waters that do not allow any degradation with few site specific exceptions. EPA believes that requirements for authorized discharges to waters designated as Outstanding Natural Resource Waters should be evaluated on a case-by-case basis. Therefore, CAFOs that seek permit coverage for discharges to such waters must apply for individual permit coverage.

Comment 7: One commenter noted that the definition of “newly defined CAFOs” includes operations that were excluded from the definition of “CAFO” prior to April 13, 2003, and questioned whether this means that existing CAFOs covered under the expired 1993 permit are excluded from the limitation for coverage in Part I.D.7.

Response 7: The limitation for coverage in Part I.D.7 applies to “new dischargers,” as defined by 40 CFR 122.2. CAFOs covered under the expired 1993 permit are excluded from this limitation for coverage, as they have previously received a finally effective NPDES permit for discharges.

Comment 8: Two commenters proposed that the limitation on coverage for new dischargers to water quality impaired waters be modified such that it applies only to discharges containing nitrogen or phosphorus. One commenter further specified that the limitation should be for discharges containing nitrogen and phosphorus in concentrations that would cause an exceedance of a receiving water’s nitrogen or phosphorus Total Maximum Daily Load.

Response 8: EPA does not concur with the proposal to restrict the limitation on coverage for new dischargers to water quality impaired waters to discharges containing nitrogen or phosphorus. Nutrients are not the only probable causes of impairment noted in New Mexico’s 2006 §303(d) list of water quality limited segments that have the potential to be present in discharges from CAFOs. The requirement of Part I.D.7 will remain as proposed.

Comment 9: EPA should prohibit all discharges from CAFOs to impaired waters by denying CAFOs authorization to discharge to impaired waters or by imposing a strict, zero discharge standard on CAFOs located in impaired watersheds. If discharges to impaired waters are allowed, such discharges should be below established water quality criteria.

Response 9: EPA believes that the requirements of Part I.D.7 are appropriate to address discharges to impaired waters. The requirement of Part I.D.7 will remain as proposed.

Comment 10: “Past history of non-compliance” should only include those types of non-compliance resulting in formal enforcement action and should not include Administrative Orders; discharges that complied with the terms of the general permit; or other minor violations that were resolved by the CAFO owner/operator.

Response 10: EPA would like to clarify that a CAFO with a past history of non-compliance is not automatically excluded from general permit coverage. EPA has proposed to determine the eligibility of such facilities for general permit coverage on a case-by-case basis. If a facility is notified by the EPA that they are ineligible for general permit coverage on the basis of Part I.D.2, the facility must apply for an individual permit if the facility discharges or proposes to discharge. EPA would also like to clarify that Administrative Orders, such as Administrative Orders without penalty (AOs) and Administrative Orders with Penalty (APOs), are formal enforcement actions.

EPA believes that this limitation on coverage is appropriate and Part I.D.2 will remain as proposed.

Comments Regarding NEPA Review for New Sources

Comment 11: The NEPA review conducted for the 1993 general permit, which resulted in a Finding of No Significant Impact, is sufficient for all CAFOs seeking coverage under the permit and no additional NEPA analyses are necessary for new source CAFOs.

Response 11: EPA Region 6 issued an Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) in connection with issuance of 1993 CAFO permits, but also performed subsequent NEPA review on individual NOIs submitted by a “new source” CAFO under those general permits. Under that tiered approach, Region 6 considered potential environmental impacts then generally associated with CAFOs when it initially issued the general permits, then focused on potential site-specific impacts in the subsequent NEPA review of each “new source” CAFO submitting an NOI. EPA thus completed NEPA review under that permit only on new source CAFOs constructed prior to the permits’ expiration in 1998. Only CAFOs on which construction commenced after promulgation of the 2003 NSPS are now considered “new sources,” however, and EPA Region 6 has thus performed prior NEPA review on no new source seeking coverage under today’s permit.

The draft permit may have contributed to confusion on this issue by indicating new sources could submit a previous EPA NEPA review document in lieu of an Environmental Impact Document (EID). Part I.D.8 and Part I.E.8 of the final permit have thus been amended to clarify that new sources must submit an EID, not a previous EPA NEPA review document, with their NOIs. An EIS or EA issued by another federal agency on a specific “new source” CAFO may be incorporated in an EID submitted to EPA, however.

Comment 12: Two commenters pointed out that NEPA requires an environmental review prior to taking any “major federal action” and that in the case of the permit, the major federal action (adoption of the general permit) occurs prior to a CAFO’s NOI submittal. The commenters suggest that EPA’s consultation with the U.S. Fish and Wildlife Service prior to issuance of the draft permit and during the public comment period precludes any requirement for a NEPA review prior to a CAFO submitting an NOI for permit coverage.

Response 12: The federal action subject to NEPA review in this matter is EPA’s authorization of discharges of pollutants by “new sources” and that NEPA review need only be completed before EPA issues such an authorization. See CWA § 511(c)(1). EPA thus has substantial discretion in structuring the framework and timing of its NEPA review in this matter where today’s “issuance” action does not itself authorize discharges. In contrast to the framework Region 6 employed under the 1993 permit described above, EPA Region 6 will perform a single NEPA review on each NOI it receives from a new source. Until that review occurs, the Region will not authorize discharges by a new source under this general permit.

Requirements for NEPA review and Endangered Species Act (ESA) consultation are imposed by separate statutes and are not coextensive. ESA consultations are frequently integrated with Agency NEPA review in accordance with 40 C.F.R. §1502.25, but consultation under ESA §7(a)(2) does not itself achieve compliance with NEPA §102(2)(C). EPA consultation with the U.S. Fish & Wildlife Service on today’s permit action does not thus “preclude” NEPA review of

new source discharge authorizations the Agency may propose in accordance with the terms of the general permit.

Comment 13: Two commenters observed that the preamble to the 2003 CAFO rule explains that “extending housing structures by constructing new housing adjacent to existing housing is not typically considered a new source.” One of these commenters recommended that EPA remove any reference to requiring information on the expansion of an existing facility be submitted to EPA for a determination of a new source.

Response 13: 40 CFR 122.29(b) sets forth the criteria for EPA to apply when considering whether a facility expansion makes a source a "new source" for NPDES permitting purposes. The preamble statement (at 68 FR 7200) these comments reference provides an example of a type of facility expansion that would not itself be typically considered a "new source." As also indicated in the preamble, however, a similar expansion might be considered a "new source" under some circumstances, e.g., if it required independent production and waste handling processes. The final permit continues to require that applicants submit information on facility expansions. EPA has amended Part I.E.8 to clarify that the applicant must submit to EPA information describing an expansion so that EPA may determine if the expansion is a new source.

Comments Regarding Application for Permit Coverage

Comment 14: Three commenters suggested that the 90-day timeframe for NOI or permit application submittal be extended, and two of these suggested using 180 days to allow adequate time for NMP development and staff training given the limited pool of qualified consultants to prepare NMPs. The commenters additionally suggested that this modification will allow EPA to process early submittals and confirm permit coverage to minimize any gap in permit coverage for existing CAFOs.

Response 14: The 90-day timeframe for NOI submittal is consistent with the requirements of other NPDES general permits issued by EPA, including the 1993 CAFO general permit and the 2008 general permits for stormwater discharges from construction and industrial activities. EPA believes that the proposed 90-day timeframe described in Part I.E.1 is an appropriate amount of time to allow for NOI submittal to the Director. Therefore, the 90-day timeframe will remain in the permit as proposed. EPA has clarified Part I.E.1.a.i to state that for any facility that received authorization to discharge under the 1993 CAFO general permit and complies with the 90-day timeframe, authorization under the 1993 CAFO permit is automatically continued until coverage is granted under this permit or coverage is otherwise terminated.

Comment 15: Under the proposed permit requirements, many operators will develop and submit a CNMP prepared in accordance with New Mexico NRCS technical guidance in lieu of an NMP that will meet the relevant requirements of 40 CFR 122 and 412. To avoid confusion and potentially duplicative paperwork, Parts I.E.1.b and I.E.5 of the permit should specify that an NMP or CNMP that meets the relevant provisions in 122.42 and 412 must be developed and submitted.

Response 15: EPA agrees with the commenter that a CNMP prepared in accordance with New Mexico NRCS technical guidance may be submitted to the EPA in lieu of an NMP, so long as the CNMP meets all requirements of the NPDES CAFO permit. However, EPA believes that noting this in the administrative record is sufficient to avoid confusion and making such a statement in the permit is not necessary.

Comment 16: The permit should require the operator to submit a site map, including the production and land application areas, flow direction, outline of drainage areas to the process wastewater retention or control structures, structural controls, and surface water bodies.

Response 16: Item II-C of Application Form 2B (Appendix A of the permit) requires the submission of a topographic map of the entire operation, which includes the production area and land under the operational control of the CAFO operator where manure, litter, and/or wastewater are applied. However, EPA concurs with the commenter that an additional site map should be required. EPA notes that previous CAFO permits issued in EPA Region 6 require such maps. Therefore, Part III.A.3.h has been added to the permit and requires that the NMP include site maps of the production and land application areas.

Comments Regarding Individual Permits

Comment 17: Part I.E.3 of the proposed permit implies that CAFOs are not eligible to apply for individual permits. Region 6 should clarify whether this is the case. In addition, it should clarify that an individual permit application is appropriate for seeking an individual permit, and that an NOI is required when seeking coverage under this general permit.

Response 17: EPA agrees that individual permit application is appropriate for CAFOs seeking an individual permit, and does not intend to deny CAFOs individual permit coverage when such permits are appropriate. Several CAFOs have submitted individual applications since 1998 when general permit coverage was no longer available. EPA anticipates that these facilities will elect to obtain general permit coverage under this permit. EPA has modified Part I.E.3 to clarify that CAFOs that have submitted an application for individual permit coverage prior to the issuance of the general permit must submit an NOI if they are now seeking general permit coverage.

PART II – EFFLUENT LIMITATIONS AND STANDARDS

Comments Regarding Production Area Limitations and Permit Conditions

Comment 18: The permit should not allow discharges from CAFOs even if caused by a storm event greater than a 25-year, 24-hour event at a properly designed, constructed, operated, and maintained operation. The 25-year, 24-hour storm design standard is not sufficiently protective of water quality, is contrary to the original intent and language (Section 101(a)) of the Clean Water Act, violates New Mexico's narrative water quality standards for nutrients, and will result in non-attainment of New Mexico's designated uses.

Response 18: The Clean Water Act prohibits discharges from point sources except as in compliance with an NPDES permit or other specific provisions of the Act. See CWA section 301(a). EPA notes that regulations, effluent guidelines and standards, and permits that authorize point sources to discharge are common throughout the NPDES program. Permit provisions authorizing discharges must take into account many factors such as economic achievability, cost-effectiveness and water quality standards of receiving streams. This permit is consistent with the effluent limitations guidelines and standards for Large CAFOs, which provide that there shall be no discharge of manure, litter, or process wastewater pollutants into waters of the United States from the production area, except if precipitation causes a discharge and the production area is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater

including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event and in accordance with the measures and records required by 40 CFR 412.37(a) and (b). This is not an exemption for all discharges that occur as a result of the 25-year, 24-hour storm. Only discharges that occur when the permitted CAFO meets all of the above requirements would be authorized by the permit.

Comment 19: The permit should clarify that the requirements of both Part II.A.1.a.i and II.A.1.a.ii must be met for a CAFO to have an allowable discharge.

Response 19: EPA has modified Part II.A.1.a.i to clarify that the requirements of both Part II.A.1.a.i and II.A.1.a.ii must be met for a CAFO to have an allowable discharge.

Comment 20: The permit should retain the 1993 General Permit provisions for discharges due to chronic rainfall events.

Response 20: The effluent limitations of the 1993 permit were established to be consistent with 1974 regulatory Best Available Technology (BAT) requirements established in 40 CFR 412 – Feedlots Point Source Category. These requirements did not allow discharges of pollutants from CAFOs into the Nation’s waters except when a chronic or catastrophic storm caused an overflow from a facility that had been designed, constructed, and operated to contain manure, process wastewater and runoff resulting from a 25-year, 24-hour storm. The Effluent Limitations Guidelines and Standards (ELGs) for CAFOs (40 CFR 412) were revised by the 2003 CAFO Rule.

The BAT and Best Practicable Control Technology Currently Available (BPT) requirements of 40 CFR Subparts C and D established by the 2003 CAFO Rule state that whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into United States waters provided the production area is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event. These requirements were not changed by the 2008 Final CAFO Rule and have been used to establish the requirement of Part II.A.1.a.i. The 1993 General Permit provisions for discharges due to chronic rainfall events are no longer appropriate and no changes will be made to the permit.

Comment 21: Two commenters suggested that because it is often difficult or impossible to completely divert and isolate outside surface drainage from the production area, and because the federal rule and other parts of the permit only require diversion “as appropriate,” EPA should soften the language in II.A.2.a.x to be more consistent with the language in III.A.3.a. One commenter further suggested that Part II.A.2.a.x and Part III.A.3.b of the permit be modified to require that the volume of run-on not diverted must be considered when designing the CAFO’s retention structure capacity.

Response 21: EPA concurs with the commenters that Part II.A.2.a.x is inconsistent with the 2008 CAFO Final Rule, as well as other parts of the permit. Part II.A.2.a.x has been modified to include the term “as appropriate.” Part II.A.2.a.x and Part III.A.3.b have also been modified to clarify that retention structures must include adequate storage capacity for clean water that is not diverted.

Comment 22: EPA should retain language from the 1993 permit requiring that runoff from manure

storage piles be retained onsite to address temporary storage of manure outside the drainage area and allow for retention of runoff from temporary storage areas within berms.

Response 22: The 1993 permit required that runoff from manure storage piles be retained on site and that the procedures documented in the pollution prevention plan ensured that the handling and disposal of wastes complied with this requirement. EPA believes that this requirement is addressed in Part II.A.6.a of the proposed permit, which states that the NMP must identify process wastewater discharges from outside the production area, including byproducts (such as manure) that have been deposited outside the production area. This requirement would allow for the use of berms or other means to retain runoff from temporary storage of manure outside the drainage area of the retention structure, so long as the practice is included in the NMP.

Comment 23: The permit should retain the retention structure/land application provision from the 1993 permit to give CAFO owners/operators the option to implement mitigation practices that minimize the volume of overflow from a retention structure when the structure is in danger of imminent overflow by discharging wastewaters to land application sites for filtering before discharging to waters of the United States

Response 23: Language was included in the 1993 permit to encourage the use of pasture or crop lands to “filter” discharges prior to entering a water of the United States as a management practice for facilities in danger of imminent discharge prior to discharging to waters of the United States. EPA believes that Part VI.A.10 of the permit sufficiently addresses bypasses and includes the mitigation requirement of releasing bypasses to vegetated fields for filtering or to secondary containment. It is important to note that any such releases that result in discharges to waters of the US are not authorized permit discharges.

Comments Regarding Land Application

Comment 24: EPA should clarify that lands that are not owned, rented or leased by a CAFO, but are in close proximity to a CAFO and are used to manage manure, litter and process wastewater from the CAFO, often under a formal or informal contract or other arrangement with the CAFO, constitute land application areas under the operational control of the CAFO owner/operator. A number of New Mexico CAFOs (primarily dairies) operate in this manner and such clarification will prevent a potential loophole in regulatory requirements. See proposed permit Part II.A.4, II.A.5, Part V.2.e, and Part VII (definition of land application).

Response 24: EPA recognizes that fields being used for land application of process wastewater may be owned or operated by neighboring farmers who may actually operate the retention structure pumping operations to irrigate crops on the recipient’s fields, perhaps under a formal or informal contractual or other agreement with the permittee. Such fields would be required under the regulations found at 40 CFR 122.42 and 412.4 to be included in the permitted CAFO’s develop and implement a nutrient management plan (NMP). Making the land owner the applier does not relieve the CAFO operator from the responsibility that the process wastewater is appropriately utilized for agricultural purposes. These fields are an integral part of the operation of the CAFO in that the CAFO operator will determine when and how much manure is applied to fields though not owned, rented or leased by the CAFO. Operational control of the land includes situations where a farmer releases control over the land application area and the CAFO determines when and how much manure is applied to fields not otherwise owned, rented, or leased by the CAFO to another entity. Any precipitation-related discharge of manure, litter, or process wastewater from these

fields would qualify for the statutory agricultural stormwater exception if the application is done in accordance with site specific nutrient management practices that ensure the appropriate utilization of the nutrients contained in the manure, litter, and process wastewater as specified in 40 CFR 122.42(e)(1)(vi)-(ix).

Comment 25: One commenter requested that EPA clarify that all CAFO owners or operators seeking coverage under the general permit must develop, submit, and implement an NMP. The commenter observed that Part II.A.4 implies that an NMP may only be required for CAFOs that apply manure, litter, or process wastewater to land under the permitted CAFO's ownership or operational control.

Response 25: EPA has modified Part II.A.4 to remove the implication that an NMP is only required for CAFOs that apply manure, litter, or process wastewater to land under the permitted CAFO's ownership or operation control. Part I.E of the permit requires that an NMP be submitted with the application for permit coverage and Part III.A states that the permittee shall develop, submit, and implement a site specific NMP. EPA believes that the requirements of Part I.E and Part III.A, along with the modification to Part II.A.4, clearly require that all CAFO operations seeking permit coverage must develop, submit, and implement an NMP.

Comment 26: Two commenters suggested that dry weather discharges from a CAFO that has properly constructed, operated, and maintained land application equipment should not be prohibited but should be reportable discharges.

Response 26: EPA believes that in most instances, a CAFO that meets technology-based permit limits for land application areas will eliminate all or most dry weather discharges. However, if such discharges remain, this water quality-based effluent limit (WQBEL) is necessary to ensure that water quality standards will not be violated by authorized discharges from any facility covered by the state-wide general permit. While the dry weather discharge prohibition has not been removed from the permit, Part II.A.5.c has been amended to clarify that there shall be no unauthorized dry weather discharges from land application sites.

Comments Regarding Inspections and Recordkeeping

Comment 27: Daily inspections of all water lines for large CAFOs or those with multiple wells could substantially increase labor costs and necessitate the creation of excessive data records that do not result in an environmental benefit. The requirement also exposes a CAFO to liability for a violation consisting of a single omission of a daily record. Two commenters requested that the water line inspection and record keeping requirement be changed from daily to weekly.

Response 27: 40 CFR 412.37(a)(1) requires routine visual inspections of the CAFO production area, and states that there must be, at a minimum, daily inspections of water lines, including drinking water or cooling water lines. No changes have been made to the water line inspection requirement of Part II.A.2.a.ii.

Comment 28: EPA should clarify the requirement to maintain records for five years. Must the records be maintained for the five-year permit term or for five years after the permit expires?

Response 28: Neither is technically correct. All records generated by permitted CAFOs under 40 CFR 122.42(e)(2)(i) must be retained for five years from the date the record is generated.

EPA has modified Part II.A.2.a.vii to clarify that records must be maintained for five years from the date that the records are created.

Comments Regarding WQBELs

Comment 29: Two commenters requested removal of the Water Quality-Based Reduction Plan requirement. The commenters asserted that such a plan is unnecessary as a general requirement for CAFOs that are designed, constructed, operated, and maintained for the 25-year, 24-hour storm. The commenters suggested that EPA consider requiring such a plan only for facilities that failed to comply with the general permit and that have had a discharge as a result of a chronic storm event. One additional commenter asked under what circumstances will WQBELs be required? What are the scientific assumptions used for determining water quality implications? What are the desired water quality outcomes?

Response 29: The Water Quality-Based Reduction Plan requirement of Part II.A.3.c has been removed from the permit.

A state-wide general permit must assure that State water quality standards will not be violated by authorized discharges from any facility covered by that permit. Technology-based effluent limitations, such as the effluent limitations guidelines in 40 CFR 412, are not always sufficiently stringent to ensure that authorized discharges meet water quality standards. In such cases, WQBELs are designed to ensure that water quality standards are met.

In the 2008 Final CAFO Rule, EPA clarified that discharges from CAFOs that are not exempt from CWA permitting requirements as agricultural stormwater discharges are subject to NPDES requirements, including WQBELs. WQBELs have been included in the permit with respect to discharges from land application areas under the control of a CAFO (Part II.A.5.c) and production area discharges (Part II.A.3) where technology-based effluent limitations are not sufficient to meet water quality standards. The desired outcome of these requirements is to ensure that no authorized discharges from CAFOs will violate State water quality standards. (see Response 26)

Comments Regarding Corrective Action

Comment 30: One commenter stated that EPA should clarify the requirement in II.A.3.d to take corrective action for discharges that cause or contribute to an exceedance of water quality. This commenter asserted that the provisions of the proposed permit that are referenced (II.A.3.a) do not specify what corrective action must be taken. Another commenter argued that the permit should require immediate corrective actions, rather than allow 6 months to 1 year for developing and implementing a Water Quality-Based Reduction Plan. This commenter stated that Parts II.A.3.c and d should clarify that discharges resulting from storm events smaller than the 25-year, 24-hour event, and discharges that cause or contribute to an exceedance of water quality standards, are permit violations.

Response 30: EPA concurs with the commenters that the proposed corrective action requirement requires clarification. EPA has modified this requirement to clarify that if at any time the facility becomes aware, or EPA determines, that a discharge to an impaired water has occurred or is proposed to occur and the requirements of Part II.A.3.a.i-iii have not been addressed, the facility must take corrective action to fulfill the requirements of Part II.A.3.a.i-iii. The corrective action requirement has been moved from Part II.A.3.d to Part II.A.3.a.iv of the permit. EPA does not

believe that a clarification of permit violations is appropriate and such a statement has not been added to the permit.

The Water Quality-Based Reduction Plan has been removed from the permit (see Response 29).

Comments Regarding Discharges to Groundwater that is Connected to Surface Water

Comment 31: The prohibition of discharges from control structures to groundwater with a direct hydrologic connection to surface waters of the United States exceeds the jurisdiction of the EPA. The Agency has not shown a connection between livestock production and groundwater quality.

Response 31: Pursuant to CWA sections 402 and 502(12), NPDES permits may authorize or prohibit additions of pollutants to jurisdictional surface water from a point source. That a point source may transmit the pollutants to those surface waters through directly connected groundwater does not deprive EPA of jurisdiction over that addition. As shown by its implementing provisions in Part III.D of the draft permit, the prohibition at issue in this comment is intended to protect jurisdictional surface waters from discharges through groundwater, not to protect groundwater quality *per se*. To further clarify that intent, Part II.A.2.b of the final permit now states "[t]here shall be no discharge of manure, litter, or process wastewater from retention or control structures to surface waters of the United States through groundwater with a direct hydrologic connection to such waters." The provisions of Part III.D (which are necessary to assure compliance with that prohibition pursuant to CWA section 402(a)(2) and 40 C.F.R. 122.44(k)(3)) remain in the final permit without amendment.

Comment 32: One type of discharge that poses potential environmental impacts is discharges via groundwater that is hydrologically connected to surface water. Such discharges are prohibited under this permit.

Response 32: The comment has been noted in the administrative record.

Comments Regarding Other Topics

Comment 33: Part II.A.5.a.i, that requires identification of areas with a high potential for erosion, and provides that where these areas have the potential to contribute pollutants to waters of the United States, measures to limit erosion and pollutant runoff must be identified, should be modified. Runoff from highly erodible areas always has the potential to contribute pollutants to waters of the United States.

Response 33: EPA disagrees with the commenter that runoff from highly erodible areas always has the potential to contribute pollutants to waters of the United States. The requirements of Part II.A.5.a.i are intended to ensure that erosion does not contribute pollutants to discharges to waters of the United States. EPA will maintain the stipulation that Part II.A.5.a.i only applies to areas that have the potential to contribute pollutants to waters of the United States.

Comment 34: In Part II.5.a.ii, the language addressing irrigation uses the terms "reduce or minimize" to address several conditions. The term "reduce" should be removed, since it has a different meaning than "minimize" and is less protective.

Response 34: EPA concurs with the commenter and the term "reduce" has been removed from Part

II.5.a.ii.

Comment 35: Is NPDES permitting the proper setting for regulating the deadline for the disposal of animal mortalities? The three day requirement is generous. Is an animal a pollutant of concern?

Response 35: NPDES permits issued to CAFOs are required by 40 CFR 122.42(e)(1)(ii) to ensure proper management of mortalities (i.e., dead animals). Furthermore, 40 CFR 412.37(a)(4) requires that mortalities must not be disposed of in any liquid manure or process wastewater handling system, and must be handled in such a way as to prevent the discharge of pollutants to surface waters. The three-day deadline for the disposal of animal mortalities was included in the previous permit, and EPA believes that it is an appropriate measure to help ensure proper mortality management.

Comment 36: When and how did the 100-foot setback become a requirement? What is the basis for this requirement?

Response 36: The 100-foot setback requirement is required by 40 CFR 412.4 as a best management practice (BMP) for land application of manure, litter, and process wastewater. This requirement was established in the 2003 CAFO Rule and was unchanged by the 2008 Final CAFO Rule. The CAFO Rules and their supporting documents can be accessed at <http://cfpub1.epa.gov/npdes/afo/aforule.cfm>.

Comment 37: Playa lakes provide essential habitat and water to wildlife in arid and semi-arid environments. Playa lakes should be protected.

Response 37: The comment has been noted in the administrative record.

PART III – SPECIAL CONDITIONS

Comments Regarding NMPs

Comment 38: Two commenters questioned the NMP public review and comment provisions. One noted that public comments may be subjective. The first commenter questioned the directive to revise NMPs based on comments if the comments are not based on scientific evidence. The second commenter asserted that NMPs should not be reviewed and made publicly available in a fashion that essentially makes every application for the general permit an “individual” application for a permit.

Response 38: In *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486-504 (2d Cir. 2005) the U.S. Court of Appeals for the Second Circuit vacated the 2003 CAFO Rule insofar as the rule allowed permitting authorities to issue NPDES permits to CAFOs without providing for adequate public participation in the development, revision, and enforcement of nutrient management plans. The public review and comment process is necessary to meet the requirements of the *Waterkeeper* decision and the 2008 Final CAFO Rule. The NMP public review and comment provisions will remain in the permit as proposed.

Comment 39: Region 6 should rely on the federal CAFO rule rather than adding additional requirements for NMPs that are unsupported and go beyond the jurisdiction of the EPA.

Response 39: Any permit issued to a CAFO must require the implementation of a NMP that, at a minimum, contains the best management practices (BMPs) specified in 40 CFR 122.42(e)(1)(i)-(ix). The definition of BMPs in the NPDES regulations (40 CFR 122.2) includes both practices and procedures to be implemented by a permittee. Part III.A.3 was developed to include the minimum practices, as well as the procedures necessary to achieve each of these practices, required to meet the applicable effluent limitations and standards. EPA does not concur that the procedures included in Part III.A.3 are unsupported and go beyond its regulations. Part III.A.3 will not be modified to address this comment.

Comment 40: The minimum NMP requirements for supporting the development of site specific terms (III.A.3.f.i-iv) are already a component of the NMP. This section should be removed to prevent confusion and could force a producer to use the linear approach.

Response 40: EPA agrees with the commenter that the minimum NMP requirements for supporting the development of site specific terms (Part III.A.3.f.i-iv) are already addressed elsewhere in the permit. EPA has removed Part III.A.3.f.i-iv from the permit and has modified Part III.A.3.f to require that the NMP include any additional information necessary to assess the adequacy of the application rates included in the NMP.

Comment 41: Many of the requirements for implementing NMPs in Part III.A.7 are duplicated elsewhere in the permit. Repetition should be eliminated.

Response 41: The permit provisions found at Part III.A.3 and Part III.A.7 are not duplicative. The permit requirements found in Part III.A.3 describe, in addition to the site-specific minimum content of the NMP to implement the applicable effluent limitations and standards, other additional content, as applicable. The permit requirements found in Part III.A.7 describe the requirements for implementing the nutrient management plan developed in compliance with the applicable requirements found in Part III.A.3.

Comment 42: Two commenters appreciated EPA's recognition of the need for flexibility in implementing NMPs without additional agency review and public notice by incorporating the narrative rate approach into the permit.

Response 42: The comment is noted in the administrative record.

Comment 43: Two commenters suggested that the permit be modified to require CAFO operators to submit substantial changes to NMPs, rather than requiring them to submit all changes to NMPs, and to require non-substantial changes to be recorded and reported with the Annual Report.

Response 43: Any permit issued to a CAFO must require the procedures stated in 40 CFR 122.42(e)(6) when a CAFO owner or operator makes changes to the CAFO's NMP previously submitted to the Director. The procedure states that the permittee must provide the Director with the most current version of the CAFO's NMP and identify changes from the previous version. The Director must review the revised NMP to ensure that it meets the requirements of 40 CFR 122 and 412, and must determine whether the changes to the NMP necessitate revision to the terms of the NMP incorporated into the permit. If revision to the terms of the permit is necessary, the Director must determine whether such changes are substantial changes. EPA may not defer determination of what constitutes a substantial change to the permittee. No changes have been made in response to this comment. However, results of calculations made during the period of permit coverage using

either the linear approach or the narrative rate approach to calculate the amount of manure, litter, or process wastewater to be applied are not considered to be changes to the NMP that must be submitted to the Director.

Comment 44: Two commenters proposed modifications to the permit language to require manure sampling and analysis to be conducted prior to land application and in accordance with the NMP. The proposed modifications delete the requirement to sample as close to the time of application as possible and the requirement to collect separate samples from each manure storage site. The commenters suggested manure should be sampled at least annually and prior to application. The commenters asserted that it is well documented that CAFO-generated manure is consistent in volume and chemistry. One commenter suggested replacing the requirement for collecting separate manure samples from each storage site with language requiring that manure samples be representative of current operational conditions and that additional samples be analyzed where operational changes have been made that may affect the nutrient characteristics of the manure.

Response 44: EPA recognizes the need for an adequate amount of time between sampling and land application to obtain and interpret the results of manure analyses. EPA has modified the permit to require that manure sampling and analysis be conducted annually prior to the first land application event for each year of permit coverage.

EPA does not agree with the general statement that CAFOs generate manure that is consistent in chemistry. However, EPA does recognize that the need for separate samples taken from each manure storage site is dependent on site-specific factors. EPA believes that this should be addressed in the representative sampling protocol established in the NMP, and has removed the separate sample requirement from the permit itself. EPA supports the use of NM NRCS, NMED, or New Mexico State University Extension manure sampling guidance, if available.

Comment 45: The commenter appreciated the flexibility allowed in the permit for soil sampling to be conducted in a manner that is representative of the land application area.

Response 45: The comment is noted in the administrative record.

Comment 46: The NMP should be required to include a preventive maintenance schedule and require records similar to expired permit Part III.B.2.f.(3) in compliance with 40 CFR 122.42(e)(1)(i).

Response 46: Part III.A.3.a of the permit requires that the NMP and each CAFO covered by the permit must ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure operation and maintenance of the storage facilities. EPA believes that this requirement, along with the recordkeeping requirements of Part II.A.2.a.vii, fulfill the maintenance requirements of 40 CFR 122.42(e)(1)(i). No changes have been made in response to this comment.

Comment 47: One type of discharge that poses potential environmental impacts is land application. The permit requires the use of an NMP, and the testing of wastes and soils. The NMP is similar to a CNMP used by USDA NRCS. Both the NMP and CNMP are models that require that any land application be at agronomic rates. The NMP allows nutrients to be applied at 125% of crop demand. The NMP nutrient loading model should be verified to determine if it is sufficiently protective of groundwater in porous soils that contribute to surface waters in New Mexico.

Response 47: NMPs in this permit utilize the New Mexico NRCS Conservation Practice Standard Code 590 (Nutrient Management) for the determination of land application rates. The Code 590 specifies that the planned rates of nitrogen and phosphorus application shall be determined based on the Phosphorus Index (PI) Rating for New Mexico. Soil permeability is considered in determining runoff class, which is one of several characteristics that influence the PI.

The commenter may be confusing NMED-Ground Water Quality Bureau (GWQB) Discharge Permits (DPs) for CAFOs with EPA's surface water discharge permit. NMED Ground Water permits require that the total nitrogen in effluent that is applied to a crop which is harvested shall not exceed by more than 25 percent the maximum amount of nitrogen reasonably expected to be taken up by the crop. A GWQB DP is issued under the authority of the New Mexico Water Quality Act and is not a NPDES permit. No changes have been made in response to this comment.

Comments Regarding Facility Closure Requirements

Comment 48: The permit needs to provide flexibility for timelines and plans for lagoon closure. The commenter suggested that the time allowed for closure should be proposed by the permittee on a case-by-case basis.

Response 48: Part III.B.1.e of the permit states that, unless otherwise authorized by EPA, completion of closure for lagoons and other earthen or synthetic lined basins shall occur as promptly as practicable after the permittee ceases to operate or, if the permittee has not ceased operations, twelve (12) months from the date on which the use of the structure ceased. The proposed requirements allow for flexibility in that EPA may grant extensions to closure deadlines on a case-by-case basis. The timelines for closure will remain in the permit as proposed.

Comment 49: The commenter supported the inclusion of closure provisions in the general permit but requests that EPA maintain the reference to New Mexico NRCS Code 360.

Response 49: The comment has been noted in the administrative record.

Comments Regarding Requirements for the Transfer of Manure, Litter and Process Wastewater to Other Persons

Comment 50: Two commenters suggested including an exception to the manure transfer record keeping requirements for small amounts transferred (less than 10 tons per year to a single recipient, or manure transferred in small loads; incidental amounts given away by pick-up truck load).

Response 50: EPA concurs with the commenters that it is appropriate to exclude small amounts from the recordkeeping requirement of Part III.C. EPA has modified Part III.C to state that amounts less than 10 tons per year to a single recipient need not be recorded.

Comment 51: One commenter supported not regulating off-site management of CAFO-generated manure, litter and process wastewater.

Response 51: The comment has been noted in the administrative record.

Comments Regarding Endangered Species and Emergency Action Plan (EAP)

Comment 52: Multiple commenters requested removal of the requirement to analyze soil samples for metals, citing language from the Preamble to the 2003 final CAFO rule stating that limiting manure application to nitrogen- or phosphorus-based rates will sufficiently limit application of metals and that the setback requirements in the rule will minimize the potential runoff of metals. One commenter also cited personal communication with a USDA agronomist who indicated that land application of manure at a nitrogen- or phosphorus-based rate and maintenance of soil pH would prevent metals toxicity. The commenter asserted that BMPs implemented to minimize soil loss combined with the visible effects on crops of metal toxicity should preclude a requirement to analyze soil samples for metals. Two commenters supported a research study for metals at CAFOs but suggested that the general permit is an inappropriate means for the collection of monitoring data.

Response 52: EPA authority for inclusion of sampling and reporting requirements in NPDES permits is provided by CWA sections 308(a)(1)(A) and 402(a)(2). This permit requirement, developed in informal consultation with the U.S. Fish and Wildlife Service, is intended to generate data for use in future permit actions. If recovered data show the comments are correct in asserting there is no need for this sampling effort, this requirement may be eliminated in subsequent iterations of this general permit.

Comment 53: Under the EAP requirements, is notification of dead or injured wildlife required regardless of whether a spill has occurred? Is notification required for all wildlife mortalities or only threatened or endangered species? The requirement that a CAFO must notify wildlife agencies if any dead or injured wildlife are found should be revised to address only those animals that are included on the endangered species list.

Response 53: EPA concurs that the notification requirements of Part III.D.5 and Part III.D.8.a require clarification. EPA has removed the notification requirement from Part III.D.8.a and will rely on the notification requirement of Part III.D.5, which applies to all permittees.

EPA has modified Part III.D.5 of the permit to clarify that notification is required if any dead or injured threatened or endangered species or protected migratory birds are observed in or on receiving waters following a discharge or on the facility's land application areas at any time. Under some circumstances, agricultural or waste treatment system operations "take" birds protected under the Migratory Bird Treaty Act or animals listed as endangered or threatened under the Endangered Species Act and may thus violate federal law. See, e.g., *United States v. FMC Corporation*, 742 F.2d 902 (2d Cir. 1978) *United States v. Rollins*, 706 F.Supp. 742 (D. Idaho 1989). This permit provision enables investigation of situations in which such takes may have occurred and implementation of corrective actions as necessary and/or appropriate. EPA has also been added to the list of agencies that must be notified in the event of any dead or injured threatened or endangered species or protected migratory birds.

Comment 54: The concern regarding selenium, copper and zinc from feed becoming a pollutant of concern through land application has only gone through informal consultation with U.S. Fish and Wildlife Service (FWS) and is incomplete. Will there be formal notice and comment if these draft permit requirements are altered or deleted?

Response 54: Generally, alteration of a proposed permit term requires no additional opportunity for comment if the final condition is a logical outgrowth of the one proposed. In the instant case, neither comments on the proposed permit nor further consultation with FWS resulted in alteration

of the proposed monitoring requirement. Accordingly EPA need not consider whether or not reproposal is necessary in this instance.

Comment 55: One type of discharge that poses potential environmental impacts is overflow from treatment lagoons during wet weather events. Under the proposed permit, BMPs must be used by CAFOs in watersheds that contain threatened or endangered species, and a CAFO discharge-related fish kill must be reported to FWS within 48 hours.

Response 55: Part III.D.5 has been modified to require FWS notification within 48 hours.

Comment 56: FWS supports sampling wastes and soil for metals because this will determine if unacceptable levels of metals are accumulating as a result of repeated land application.

Response 56: The comment has been noted in the administrative record.

Comment 57: Three commenters supported the requirement for an Emergency Action Plan (EAP) provided that the language in Part III.8.a that states “BMP(s) to reach this goal may include, but are not limited to ...” is also retained. One commenter further specifies that the following basic elements of the EAP be listed in the general permit: emergency contacts and phone numbers, recovery equipment (available onsite to mitigate a discharge), and action plans for discharge from a containment structure, discharge during pumping, or discharge during transport.

Response 57: The comment has been noted in the administrative record. While the above suggested basic elements have not been incorporated into the permit, EPA is not opposed to their inclusion in a CAFO’s EAP.

Comments Regarding Spills

Comment 58: Two commenters questioned the need or authority for a provision related to “spills” since the general permit regulates discharges to waters of the United States, rather than spills that are contained on site at the CAFO. One commenter proposed including permit language requiring spill remediation and documentation to replace the reporting requirement in the draft general permit.

Response 58: The requirements of Part III.D.3 are intended to ensure that spills do not contribute pollutants to discharges to waters of the United States. As previously stated, NPDES permits may prohibit additions of pollutants to waters of the United States (see response 31). However, EPA concurs with the commenter that requiring documentation is more appropriate than a reporting requirement. EPA has removed the reporting reference to Part IV of the permit and replaced it with a requirement to document spills and clean-up activity.

Comment 59: Part III.D.3 of the proposed permit does not include a requirement to provide a list of significant materials or a requirement to document materials handling and storage procedures in the NMP. In all cases, if significant materials are used, stored or disposed, spills should be addressed. Materials handling procedures and storage must be specified in the NMP. The permit should require that all spills and cleanup be documented.

Response 59: Part III.D.3 of the permit has been modified to state that handling procedures and storage for any toxic and other pollutants must be specified in the NMP. EPA has also removed

the reporting reference to Part IV of the permit and replaced it with a requirement to document spills and clean-up activity (see Response 58).

Comments Regarding Other Special Conditions

Comment 60: In Parts III.D.1.a and b, the proposed permit requires documentation (direct hydrologic connection) by an NRCS engineer or a P.E. However, Part III.D.1.c allows some documentation (liner maintenance and periodic site evaluation) to be done by a P.E. or a qualified groundwater scientist. One commenter asserted that these latter evaluations should be done by an NRCS engineer or a New Mexico P.E. Another commenter requested that the list of persons who may document no direct hydrologic connection include “qualified groundwater scientists,” consistent with the 1993 permit.

Response 60: EPA agrees that Part III.D.1 should have consistent documentation requirements. EPA has modified Part III.D.1.c to state that any mechanical or structural damage to the liner must be evaluated by a NRCS Engineer or Professional Engineer and that the permittee shall have a NRCS Engineer or Professional Engineer review documentation.

Comment 61: Based on the Second Circuit Court’s decision in *Waterkeeper et al. v EPA* that EPA does not have the authority to require CAFOs to apply for a permit based on a potential discharge, one commenter asserted that EPA also does not have the authority to require a CAFO to install a leak detection system or monitoring wells based on the potential for contamination of surface waters or drinking water. Such a system can only be required where monitoring data show a hydrologic connection from an improperly lined lagoon to a water of the United States. Another commenter noted that installing leak detection systems or monitoring wells if a potential exists for contamination of surface waters or drinking water may not be feasible in some circumstances and would create a financial burden. EPA should allow “other investigative devices or methods” to be used.

Response 61: EPA concurs that the requirements of Part III.D.1.c should be updated based on the *Waterkeeper* decision. The infiltration monitoring requirement of Part III.D.1.c has been modified to be based on a direct hydrological connection to waters of the United States. EPA has also modified this section to allow for other appropriate measures to be used in lieu of leak detection systems or monitoring wells.

EPA would also like to clarify the proposed tree root zone requirement of Part III.D.1.c. EPA has modified this provision to state that “no tree shall be allowed to grow such that the root zone would intrude or compromise the structure of the liner.”

Comment 62: The requirement that manure, litter, and process wastewater handling, treatment, and management not result in the contamination of drinking water exceeds EPA’s authority under the Clean Water Act. Two commenters suggested that the reference to “drinking water” in Part III.D.6 be changed to “surface water.” One commenter suggested removal of the reference to “drinking water in Part III.D.1.c.”

Response 62: Requirements referring to drinking water were brought forward from the 1993 permit. These requirements were originally included in the 1993 permit in order to protect the sources of surface water from the leakage of pollutants through unlined retention structures.

Since the issuance of the 1993 permit, EPA has observed that many liners leak and discharge to groundwater which eventually discharges to surface water, via a hydrologic connection. Discharges of manure, litter, or process wastewater from retention or control structures to surface waters of the United States through groundwater with a direct hydrologic connection to such waters also results in the contamination of drinking water sources. References to drinking water will remain in the permit as proposed.

Comment 63: Part III.D.7 requires regular employee training and provides that the permittee determine training frequency and that the NMP shall identify dates for such training. EPA should clarify that training frequency must at a minimum be once per year and that it can be more frequent when appropriate.

Response 63: EPA believes that it is appropriate for the frequency of employee training to be determined on a case-by-case basis. Therefore the requirement of Part III.D.7 will remain in the permit as proposed.

Comment 64: The 2008 CAFO rule has weakened the permitting process by reducing the number of CAFOs that require permits and by allowing certification for new facilities that may pose a high risk for discharges. The commenter is deeply concerned about the impacts to Bureau of Reclamation project waters as a result of the siting, design, construction, operation, and maintenance of CAFOs in close proximity to floodplains. The commenter recommended that siting requirements be included in the general permit. Many non-point source guidance documents offer assistance in this area.

Response 64: EPA believes that it is beyond the scope of the NPDES permit program to regulate pre-construction activities. Therefore, EPA will not be adding siting requirements to the permit.

PART IV – DISCHARGE MONITORING AND NOTIFICATION REQUIREMENTS

Comments Regarding Notification of Discharges

Comment 65: The commenter requested the addition of language to require CAFOs to orally report discharges to New Mexico Environment Department.

Response 65: EPA has modified Part IV.A of the permit to require CAFOs to orally report the discharge of pollutants to waters of the United States to NMED.

Comments Regarding Monitoring Requirements for All Discharges from Retention Structures

Comment 66: Several commenters requested the removal of pH and temperature from the list of parameters for discharge monitoring. Two commenters based the request on consistency with the 1993 permit or federal CAFO regulations. Two commenters asserted that field measurements for temperature and pH would be difficult if not impossible for the average livestock producer to achieve.

Response 66: EPA believes that monitoring requirements for temperature and pH are necessary in order to account for the influence of these parameters on ammonia toxicity (see Subsections L and M of 20.6.4.900 NMAC). Therefore, the monitoring requirements of Part IV.B.1 will remain in

the permit as proposed.

Comment 67: Discharge sampling requirements should be required within 30 minutes of obtaining knowledge of the discharge event, not within 30 minutes of the event itself.

Response 67: EPA does not concur with the commenter that discharge samples should be required within 30 minutes of obtaining knowledge of the discharge event. Therefore, Part IV.B.3 will remain in the permit as proposed.

Comment 68: Part IV.B.4 should be revised to allow for situations where conditions for sampling are not “feasible” (in addition to “safe”), such as when the flow pattern of a discharge is so shallow that it is not feasible to obtain a sample.

Response 68: EPA does not concur with the commenter that it is necessary to modify Part IV.B.4 to address conditions where sampling is not feasible. The Industrial Stormwater Monitoring and Sampling Guide, March 2009 (EPA 832-B-09-003) provides guidance on how to concentrate sheet flow for sampling.

Comments Regarding General Inspection, Monitoring, and Record Keeping Requirements

Comment 69: Two commenters requested coordinating similar permit requirements. One commenter requested that EPA work with the commenter and enter into a memorandum of understanding with New Mexico Environment Department (NMED) and USDA/NRCS to develop a common record-keeping book that could be used by CAFOs to satisfy the record keeping requirements of the NPDES permit, the NMED Groundwater Discharge permit, and USDA/NRCS CNMP requirements since these include many common elements. This commenter also note that the requirements for the State of New Mexico Environment Department Ground Water Discharge Permit, with which New Mexico dairy operators must comply, are equivalent to the NMP required under the EPA General Permit. Another commenter supported a single permit, and single recordkeeping system that coincides with the New Mexico groundwater permitting and recordkeeping. Two sets of requirements make compliance complex and burdensome.

Response 69: EPA recognizes that this NPDES permit, NMED-GWQB-DPs, and USDA-NRCS CNMPs have common requirements. EPA does not oppose the use of a common CAFO recordkeeping book that combines management plans and reporting requirements for NMED-GWQB Discharge Permits, NPDES CAFO permits, and CNMPs, and would accept this common plan as an NMP so long as the requirements of the NPDES CAFO permit are fulfilled. EPA believes that an acceptable common plan could be created by the CAFO and does not believe it to be necessary to enter into a memorandum of understanding with USDA-NRCS and NMED.

A GWQB DP is issued under the authority of the New Mexico Water Quality Act and is not a NPDES permit. EPA does not have the authority to combine the GWQB DP with the NPDES CAFO permit.

Comment 70: The requirement to maintain records that the NMP was developed and implemented in accordance with minimum practices in 40 CFR 122.42(e) is redundant of other aspects of the permit; the NMP itself will reflect how it was developed and is being implemented.

Response 70: Table IV-A does not create new requirements for permittees. Rather it is a tool for

summarizing the recordkeeping requirements that arise under different parts of the permit for the benefit of the permitting authority, permittee and inspector. Permitted CAFOs are required to keep and maintain records of implementation and management of the NMP. After considering this comment, EPA did provide some clarification to the provision in Table IV-A that generated the concern.

Comment 71: Two commenters requested clarification on the requirement for documenting weather conditions at the time of land application and for 24 hours prior to and following application.

Response 71: 40 CFR 412.37(c)(3) requires documentation of weather conditions at the time of application and for 24 hours prior to and following application. EPA believes that it is appropriate for the CAFO to determine the weather conditions that should be reported to fulfill this requirement based on site-specific information. EPA notes that Managing Manure Nutrients at Concentration Animal Feeding Operations, December 2004, provides rainfall amounts as an example of a weather condition that could be reported to fulfill the requirement of 40 CFR 412(c)(3).

Comment 72: Part IV.C does not appear to document the requirement for the CAFO owner/operator to conduct and record weekly inspections pursuant to II.A.2.a.i (storm water diversion devices, runoff diversion structures, and devices channeling contaminated stormwater to the wastewater and manure storage structure) and II.A.2.a.iv (the manure, litter, and process wastewater impoundments). IV.C., Table IV-A partially addresses the latter.

The permit should require each CAFO to conduct and record an annual comprehensive site inspection, including timely corrective actions taken. The requirements should be similar to expired permit Part III.B.2.f.(6)(C).

Response 72: The 1974 regulatory requirements established in 40 CFR 412 – Feedlots Point Source Category did not address inspection or record keeping requirements. Site inspection and recordkeeping requirements were included in the 1993 permit to ensure that the pollution prevention plan was up to date and accurate, and that the Agency had access to records of permit compliance. The Effluent Limitations Guidelines and Standards (ELGs) for CAFOs (40 CFR 412) were revised by the 2003 CAFO Rule to include inspection and recordkeeping requirements. EPA believes that inspection and recordkeeping requirements based on 40 CFR 412.37, along with the other requirements of the permit, achieve the goal of the site inspection requirement of the previous permit. The site inspection requirement of the 1993 permit has not been added to this permit. It should be noted that Part II.A.2.a.v of the permit requires timely corrective actions.

The Operation and Maintenance section of Part IV.C, Table IV-A has been modified to include the inspection requirements of Parts II.A.2.a.i and II.A.2.a.iv.

Comment 73: One type of discharge that poses potential environmental impacts is accidental discharges. Under the proposed permit, routine inspections are required to minimize such discharges.

Response 73: The comment has been noted in the administrative record.

PART V – ANNUAL REPORTING REQUIREMENTS

Comments Regarding Reporting

Comment 74: How do the 12 required reporting elements differ from previous reporting requirements?

Response 74: The 1993 permit did not include annual reporting requirements. Annual reporting requirements for CAFOs were established by the 2003 CAFO Rule and the 2008 Final CAFO Rule, and were incorporated into this permit to fulfill 40 CFR 122.42(e)(4).

Comment 75: Two commenters suggested that basing each CAFO's annual report due date on the NOI submittal date could be confusing and overly burdensome to producers that have multiple operations with different due dates. One commenter recommends that the producer be allowed to determine the reporting timeframe. Both commenters supported a requirement that all annual reports be due at the same time every year.

Response 75: EPA recognizes that basing each CAFO's annual report due date on the NOI submittal date could be confusing and burdensome to producers that have multiple operations. Therefore, EPA has modified the permit to require that annual reports be submitted to EPA and NMED on January 31.

PART VI – STANDARD PERMIT CONDITIONS

Comments Regarding Standard Conditions

Comment 76: The commenter suggested the addition of language to require that the Director or authorized representative shall comply with all health and biosecurity requirements in place on the facility.

Response 76: EPA recognizes the importance of biosecurity and that failing to take appropriate steps to prevent disease transmission could result in severe financial impacts on CAFOs. For this reason, it is common practice for EPA personnel to follow a facility's health and biosecurity requirements where appropriate. Additionally, EPA personnel comply with the December 2001, "Routine Biosecurity Procedures for EPA Personnel Visiting Farms, Ranches, Slaughterhouses and Other Facilities with Livestock and Poultry" guidance document. This guidance was developed in coordination with the USDA NRCS, USDA Animal and Plant Health Inspection Service (APHIS), and the Food and Drug Administration. However, EPA does not believe that it is appropriate to include a requirement for the Director or authorized representatives to comply with the health and biosecurity requirements in place on the facility.

Comment 77: Provisions VI.B.1 and 2 are repetitive of provisions VI.A.13 and 14 and provision VI.C.1.c is repetitive of the requirement in VI.A.15; all of these repetitive provisions should be deleted. The commenter suggested that provision VI.B.3 be renumbered as VI.A.16 and Part VI.B be deleted.

Response 77: EPA agrees with the commenter that certain provisions of Part VI are unnecessarily repetitive. Parts VI.B.1, VI.B.2, and VI.C.1 have been removed from the permit. Parts VI.A.13 and VI.A.14 have been modified to capture necessary language from Parts VI.B.1 and VI.B.2. Part VI.B.3 has been renumbered as Part VI.B as opposed to moving the provision to Part VI.A and deleting Part VI.B.

OTHER COMMENTS

Comments Regarding Burden/Economic Impact

Comment 78: One commenter supported all regulatory actions that reduce the cost, time and paperwork burden in complying with federal regulations.

Response 78: The 2003 CAFO rule had a universal duty to apply requirement which required all CAFOs to obtain NPDES permit coverage. The revised rule changes the duty to apply requirement so only CAFOs that discharge or proposed to discharge must seek NPDES coverage. EPA projects that CAFO operators and permitting authorities will collectively experience a reduction in total annual administration burden of 25,500 hours as a result of the regulatory revisions to address the court decision. Labor burden is projected to undergo a net decrease in administrative costs of \$0.5 million annually.

Comment 79: The fact sheet is 27 pages long, which suggests that the permit is burdensome, but the fact sheet does not provide the specific information needed to assess the impacts to operations.

Response 79: Stakeholders were given the opportunity to request clarification or additional information regarding the impact of the proposed permit on CAFOs during the public comment period. Public meetings were also held in Roswell, NM on February 9, 2009 and in Albuquerque, NM on February 10, 2009 to provide NPDES stakeholders an opportunity to informally discuss the permit with EPA.

Comment 80: EPA should perform an economic analysis for medium and large CAFOs.

Response 80: The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, such as medium and large CAFOs, based on the Small Business Administration (SBA) size standards at 13 CFR 121.201. After considering the economic impacts of the regulations on small entities, EPA has determined the rule will not have a significant adverse economic impact on a substantial number of small entities. The final rule did not change the substantive requirements for CAFO operators or increase the net paperwork burden faced by facilities compared to the burden impact imposed under the 2003 CAFO rule. Some CAFOs will face increased permitting costs due to the new NMP provisions, while others will face reduced costs due to the changes in the duty to apply. However, these paperwork cost changes are generally small and do not rise to the level of a significant adverse economic impact on a substantial number of operators.

Comment 81: If a CAFO is not eligible for the general permit, what are the additional regulatory burdens associated with complying with an individual permit?

Response 81: CAFOs that seek NPDES individual permit coverage must submit NPDES Application Form 2B for Concentrated Animal Feeding Operations and their NMPs to the Director, and must fulfill all NEPA and ESA requirements prior to permit issuance. Many of the requirements of an individual permit will be common with the requirements of the general permit. However, there may be additional site specific requirements depending on what caused the facility

to be ineligible for general permit coverage.

Comments Regarding Comment Deadline

Comment 82: One commenter requested an extension of the 2/27/09 comment deadline. The public meetings held were not well publicized and would be better located closer to New Mexico CAFOs.

Response 82: The public comment period for the permit ended on February 20, 2009. EPA did not grant an extension of this deadline. As previously stated, public meetings were held in Roswell, NM on February 9, 2009 and in Albuquerque, NM on February 10, 2009. The public meeting locations and dates were selected with input from CAFO industry representatives in the State. The meetings were noticed in the *Albuquerque Journal* and *Roswell Daily Record* on February 3, 2009. In setting locations for meetings EPA must consider that the regulated community is not the sole stakeholder in the CAFO permit. EPA must also consider the participation of private citizens and State/Federal Agencies in the planning of public meetings.

Comments Regarding Which CAFO Rules Apply

Comment 83: Which rules apply to CAFOs in New Mexico: the 1993-1998 permit; the 2003 CAFO rule (which has postponed necessary adjustments until 2/27/2009); or the 2008 rule (which won't be "regulated" until 2/27/2009)?

Response 83: The 1993 CAFO permit will be void upon issuance of the proposed 2009 permit. The portions of the 2003 CAFO rule that were unaffected by the 2005 *Waterkeeper* decision are in effect as well as the 2008 Final Rule.

Comments Regarding Waters of the United States

Comment 84: How does EPA define "waters of the United States"?

Response 84: Defining "waters of the United States" is beyond the scope of this permit action.

Comments Regarding Notice of Receipt of NOI

Comment 85: The U.S. DOI Bureau of Reclamation would appreciate being notified when an NOI is received for a discharge from a new or existing CAFO into waters of the United States that could impact Reclamation's project waters or works (identified on map attached to comments).

Response 85: A CAFO's NOI, NMP, and draft terms of the NMP to be incorporated into the permit will be published on the EPA Region 6, Water Quality Protection Division internet site (<http://www.epa.gov/earth1r6/6wq/6wq.htm>) during the 30-day public review and comment period. The commenter can also request to be placed on the mailing list for notification of New Mexico NPDES permitting actions by contacting Ms. Diane Smith using one of the following methods: Mail: Environmental Protection Agency, Water Quality Protection Division (6WQ-NP), 1445 Ross Ave., Suite 1200, Dallas, TX 75202; telephone number: (214) 665-2145; email address: smith.diane@epa.gov.

Comments Regarding Limitations on 3rd Party Lawsuits

Comment 86: One commenter expressed concern that CAFOs operating in compliance with the permit remain vulnerable to 3rd party lawsuits and proposed language to be included in the permit to prohibit filing of 3rd party lawsuits against CAFOs that are in compliance with the permit.

Response 86: EPA does not have authority to include such provisions in a permit.

Comments Regarding Groundwater Impacts From Dairies

Comment 87: One commenter cited reports and stated a general concern regarding the impact of dairy operations on groundwater in New Mexico.

Response 87: The comment has been noted in the administrative record.