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.

Note: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in §122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions unless the corporation has notified the Director to the contrary. Corporate procedures having overall responsibility for the operations of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. Any person signing a document under paragraph (a) or (b) of 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.


§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see §123.25).

(a) Scope. Concentrated animal feeding operations (CAFOs), as defined in paragraph (b) of this section or designated in accordance with paragraph (c) of this section, are point sources, subject to NPDES permitting requirements as provided in this section. Once an animal feeding operation is defined as a CAFO for at least one type of animal, 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.

(b) Definitions applicable to this section:
(1) 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 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.

(2) Concentrated animal feeding operation ("CAFO") means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO in accordance with paragraph (c) of this section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) The term land application area means land under the control of an AFO 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.

(4) Large concentrated animal feeding operation ("Large CAFO"). An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

(i) 700 mature dairy cows, 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).

(5) The term manure is defined to include manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

(6) Medium concentrated animal feeding operation ("Medium CAFO"). The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges listed in paragraph (b)(6)(i) of this section and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

(i) The type and number of animals that it stables or confines falls within any of the following ranges:

(A) 200 to 699 mature dairy cows, whether milked or dry;

(B) 300 to 999 veal calves;

(C) 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;

(D) 750 to 2,499 swine each weighing 55 pounds or more;

(E) 3,000 to 9,999 swine each weighing less than 55 pounds;

(F) 150 to 499 horses;

(G) 3,000 to 9,999 sheep or lambs;

(H) 16,500 to 54,999 turkeys;

(I) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(J) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(K) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(L) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or

(M) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and
(ii) 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.

(7) Process wastewater means water directly or indirectly used in the operation of the AFO 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 any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

(8) 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 confinement 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 stalls. 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.

(9) Small concentrated animal feeding operation ("Small CAFO"). An AFO that is designated as a CAFO and is not a Medium CAFO.

(c) How may an AFO be designated as a CAFO? The appropriate authority (i.e., State Director or Regional Administrator, or both, as specified in paragraph (c)(1) of this section) may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the United States.

(1) Who may designate?—(i) Approved States. In States that are approved or authorized by EPA under Part 123, CAFO designations may be made by the State Director. The Regional Administrator may also designate CAFOs in approved States, but only where the Regional Administrator has determined that one or more pollutants in the AFO’s discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant.

(ii) States with no approved program. The Regional Administrator may designate CAFOs in States that do not have an approved program and in Indian country where no entity has expressed demonstrated authority and has been expressly authorized by EPA to implement the NPDES program.

(2) In making this designation, the State Director or the Regional Administrator shall consider the following factors:
(i) The size of the AFO and the amount of wastes reaching waters of the United States;
(ii) The location of the AFO relative to waters of the United States;
(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;
(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and
(v) Other relevant factors.

(3) No AFO shall be designated under this paragraph unless the State Director or the Regional Administrator has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO with numbers of animals below
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those established in paragraph (b)(6) of this section may be designated as a CAFO unless:

(i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) NPDES permit authorization.—(1) Permit Requirement. A CAFO must not discharge unless the discharge is authorized by an NPDES permit. In order to obtain authorization under an NPDES permit, the CAFO owner or operator must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit.

(2) Information to submit with permit application or notice of intent. An application for an individual permit must include the information specified in §122.21. A notice of intent for a general permit must include the information specified in §§122.21 and 122.28.

(3) Information to submit with permit application. A permit application for an individual permit must include the information specified in §122.21. A notice of intent for a general permit must include the information specified in §§122.21 and 122.28.

(e) Land application discharges from a CAFO are subject to NPDES requirements. The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural stormwater discharge as provided in 33 U.S.C. 1362(14). For purposes of this paragraph, where the manure, litter or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in §122.42(e)(1)(vi)–(ix), a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge.

(1) For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural stormwater discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in §122.42(e)(1)(vi)–(ix).

(2) Unpermitted Large CAFOs must maintain documentation specified in §122.42(e)(1)(ix) either on site or at a nearby office, or otherwise make such documentation readily available to the Director or Regional Administrator upon request.

(f) By when must the owner or operator of a CAFO have an NPDES permit if it discharges? A CAFO must be covered by a permit at the time that it discharges.

(g) [Reserved]

(h) Procedures for CAFOs seeking coverage under a general permit. (1) CAFO owners or operators must submit a notice of intent when seeking authorization to discharge under a general permit in accordance with §122.28(b). The Director must review notices of intent submitted by CAFO owners or operators to ensure that the notice of intent includes the information required by §122.21(i)(1), including a nutrient management plan that meets the requirements of §122.42(e) and applicable effluent limitations and standards, including those specified in 40 CFR part 412. When additional information is necessary to complete the notice of intent or clarify, modify, or supplement previously submitted material, the Director may request such information from the owner or operator. If the Director makes a preliminary determination that the notice of intent meets the requirements of §§122.21(i)(1) and 122.24(e), the Director must notify the public of the Director’s proposal to grant coverage under the permit to the CAFO and make available for public review and comment the notice of intent.
submitted by the CAFO, including the
CAFO’s nutrient management plan, and the
draft terms of the nutrient
management plan to be incorporated
into the permit. The process for sub-
mitting public comments and hearing
requests, and the hearing process if a
request for a hearing is granted, must
follow the procedures applicable to
draft permits set forth in 40 CFR 124.11
through 124.13. The Director may es-

tablish, either by regulation or in the
general permit, an appropriate period
of time for the public to comment and
request a hearing that differs from the
time period specified in 40 CFR 124.10.
The Director must respond to signifi-
cant 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
nutrient management plan in order to
be granted permit coverage. When the
Director authorizes coverage for the
CAFO owner or operator under the gen-
eral permit, the terms of the nutrient
management plan shall become incor-
porated as terms and conditions of the
permit for the CAFO. The Director
shall notify the CAFO owner or oper-
ator and inform the public that cov-
erage has been authorized and of the
terms of the nutrient management
plan incorporated as terms and condi-
tions of the permit applicable to the
CAFO.

(2) For EPA-issued permits only. The
Regional Administrator shall notify
each person who has submitted written
comments on the proposal to grant
coverage and the draft terms of the nu-
trient management plan or requested
notice of the final permit decision.
Such notification shall include notice
that coverage has been authorized and
of the terms of the nutrient manage-
ment plan incorporated as terms and condi-
tions of the permit applicable to the
CAFO.

(3) Nothing in this paragraph (b)
shall affect the authority of the Direc-
tor to require an individual permit under §122.28(b)(3).

(a) Permit requirement. Concentrated
aquatic animal production facilities, as
defined in this section, are point
sources subject to the NPDES permit
program.

(b) Definition. Concentrated aquatic
animal production facility means a
hatchery, fish farm, or other facility
which meets the criteria in appendix C
of this part, or which the Director des-
ignates under paragraph (c) of this sec-
tion.

(c) Case-by-case designation of con-
centrated aquatic animal production fa-
cilities. (1) The Director may designate
any warm or cold water aquatic animal
production facility as a concentrated
aquatic animal production facility
upon determining that it is a signifi-
cant contributor of pollution to waters
of the United States. In making this
designation the Director shall consider
the following factors:
(i) The location and quality of the re-
ceiving waters of the United States;
(ii) The holding, feeding, and produc-
tion capacities of the facility;
(iii) The quantity and nature of the
pollutants reaching waters of the
United States; and
(iv) Other relevant factors.

(2) A permit application shall not be
required from a concentrated aquatic
animal production facility designated
under this paragraph until the Director
has conducted on-site inspection of the
facility and has determined that the fa-
cility should and could be regulated
under the permit program.

[48 FR 14153, Apr. 1, 1983, as amended at 65
FR 30907, May 15, 2000]

§122.25 Aquaculture projects (applica-
table to State NPDES programs, see
§123.25).

(a) Permit requirement. Discharges
into aquaculture projects, as defined in
this section, are subject to the NPDES
permit program through section 318 of
CWA, and in accordance with 40 CFR
part 125, subpart B.

(b) Definitions. (1) Aquaculture project
means a defined managed water area
which uses discharges of pollutants

[68 FR 7265, Feb. 12, 2003, as amended at 71
FR 6984, Feb. 10, 2006; 72 FR 40250, July 24,
2007; 73 FR 70480, Nov. 20, 2008; 77 FR 44497,
July 30, 2012]