

Dated: August 17, 1995.

Elliott P. Laws,

*Assistant Administrator for Solid Waste and
Emergency Response.*

[FR Doc. 95-21278 Filed 8-25-95; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5285-4]

**Proposed General NPDES Permit for
Concentrated Animal Feeding
Operations (CAFO) in Idaho**

AGENCY: Environmental Protection
Agency, Region 10.

ACTION: Notice of a proposed general
permit.

SUMMARY: This proposed reissuance of the CAFO general permit is intended to regulate CAFO activities in the state of Idaho. When issued, the proposed permit will establish limitations, standards, prohibitions and other conditions for covered facilities. These conditions are based on existing national effluent guidelines and material contained in the administrative record. A description of the basis for the conditions and requirements of the proposed general permit is given in the fact sheet published below.

Part I.C. of the proposed permit identifies the facilities which can qualify for coverage under this permit. Parts I.C.7. and 8. specify that facilities that discharge directly or through a man-made device into waters of the United States qualify for coverage under this permit. The Region 10 office of EPA requests comment on whether the universe of facilities to be covered should be expanded to include those facilities which have the potential to discharge.

EXECUTIVE ORDER 12291: The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8[b] of that order.

PUBLIC COMMENT PERIOD: Interested persons may submit comments on the draft general permit to EPA, Region 10 at the address below. Comments must be received in the regional office on or before October 27, 1995.

PUBLIC HEARINGS: Public hearings on the permit conditions are scheduled in Boise and Twin Falls, Idaho. The Boise hearing will be held on Wednesday, September 27, 1995, in the 1st Floor Conference Center at the Division of Environmental Quality, Earl Chandler Building, 1410 N Hilton, Boise, Idaho, from 6:30 pm until all persons have been heard. The Twin Falls hearing will be held on September 28, 1995 in Room 117 of the Shields Building at the

College of Southern Idaho, 315 Falls Avenue, Twin Falls, Idaho, also from 6:30 pm until all persons have been heard. Persons interested in obtaining information on the hearings should contact Joe Roberto at the address below.

REQUEST FOR COVERAGE: Written request for coverage and authorization to discharge under the general permit shall be provided to EPA, Region 10, as described in Part I.D. of the draft permit. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the operation.

ADDRESSES: Comments on the proposed general permit should be sent to Joe Roberto; U.S. EPA, Region 10; 1200 Sixth Avenue WD-135; Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Joe Roberto at the Seattle address above or by telephone at (206) 553-1669.

REGULATORY FLEXIBILITY ACT: After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: August 17, 1995.

Gregory L. Kellogg,

Acting Director, Water Division.

Fact Sheet

United States Environmental Protection Agency (EPA), Region 10, 1200 Sixth Avenue, WD-134, Seattle, Washington 98101, (206) 553-1214. General Permit No.: ID-G-01-0000.

**Proposed Reissuance of a General
National Pollutant Discharge
Elimination System (NPDES) Permit To
Discharge Pollutants Pursuant to the
Provisions of the Clean Water Act
(CWA)**

*Idaho Concentrated Animal Feeding
Operations (CAFO)*

This Fact Sheet includes (a) the tentative determination of the EPA to reissue the general permit, (b) information on public comment, public hearing and appeal procedures, (c) the description of the industry and proposed discharges, and (d) other conditions and requirements.

Persons wishing to comment on the tentative determinations contained in the proposed general permit reissuance may do so by the expiration date of the Public Notice. All written comments

should be submitted to EPA as described in the Public Comments Section of the attached Public Notice.

After the expiration date of the Public Notice, the Director, Water Division, will make final determinations with respect to the permit reissuance. The tentative determinations contained in the draft general permit will become final conditions if no substantive comments are received during the public notice period.

The permit will become effective 30 days after the final determinations are made, unless a request for an evidentiary hearing is submitted within 30 days after receipt of the final determinations.

The proposed NPDES general permit and other related documents are on file and may be inspected at the above address any time between 8:30 a.m. and 4 p.m., Monday through Friday. Copies and other information may be requested by writing to EPA at the above address to the attention of the Water Permits Section, or by calling (206) 553-1214. This material is also available from the EPA Idaho Operations Office, 1435 North Orchard Street, Boise, Idaho 83706.

Table of Contents

- I. Applicants
- II. Receiving Water
- III. Background Information
 - A. Description of the Industry
 - B. What Pollutants are Being Discharged?
 - C. Why is a General Permit Being issued?
- IV. Permit Coverage
 - A. Who needs to be covered by this permit?
 - B. What constitutes a discharge?
 - C. How to determine if an animal feeding operation is a CAFO?
 - 1. Animal Feeding Operation
 - 2. CAFO Criteria
 - 3. Animal Units
 - 4. Permit Coverage
 - 5. Permit Expiration
- V. Permit Requirements
 - A. Basis of Discharge Limitations
 - 1. Statutory Requirements
 - 2. Technology-Based Limitations
 - 3. Water Quality Based Limitations
 - B. Best Management Practices (BMP)
 - 1. Design of Control Facilities
 - 2. Facility Expansion
 - 3. Chemical Handling
 - 4. Access Restriction
 - 5. Land Application
 - C. Prohibitions
- VI. Basis for Monitoring and Reporting Requirements
 - A. Notice of Intent
 - B. Discharge Notification
- VII. Limitations of the General Permit
 - A. Limitations on Coverage
 - B. Individual Permits
- VIII. Other Requirements
 - A. Endangered Species Act
 - B. State Certification

Technical Information

I. Applicants

This permit is applicable for facilities classified as Concentrated Animal Feeding Operations (CAFOs) in the state of Idaho.

II. Receiving Water

Receiving waters are the surface waters or waters of the United States as defined in 40 CFR 122.2 in which wastewater from CAFOs are discharged. This includes rivers, streams, creeks, and their tributaries. EPA interprets this definition to include irrigation ditches, laterals, and canals which flow into waters of the United States.

III. Background Information

A. Description of the Industry

The activity associated with CAFOs is the confinement of animals, including poultry but excluding ducks, for meat, milk, or egg production, or stabling, in pens or houses, where the animals are fed or maintained at the place of confinement [40 CFR 412.11(b)].

B. What Pollutants Are Being Discharged?

The most commonly recognized contaminants from CAFOs include biochemical oxygen demand (BOD), total suspended solids (TSS), organics, bacteria, and nutrients (nitrogen and phosphorous compounds).

C. Why is a General Permit Being Issued?

1. Section 301(a) of the Clean Water Act (Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. Although such permits have been issued to individual dischargers, EPA's regulations do authorize the issuance of "general permits" to categories of discharges [40 CFR 122.28] when a number of point sources are:

- a. Located within the same geographic area and warrant similar pollution control measures;
- b. Involve the same or substantially similar types of operations;
- c. Discharge the same types of waste;
- d. Require the same effluent limitations or operating conditions;
- e. Require the same or similar monitoring requirements; and
- f. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

2. The use of a General Permit to regulate CAFOs is appropriate because of the following:

a. Waste characteristics from different CAFOs are substantially similar [Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Feedlots Point Source Category (Development Document), January 1974; and the Environmental Assessment of Regulatory Strategies for Confined Animal Feeding Operations in Idaho (EA), by Jones and Stokes Associates, Inc. 1985].

b. The effluent limitations and requirements for all CAFOs covered by this general permit are identical. They are supported by the promulgated effluent guidelines (40 CFR 412.13), best management practices (BMPs), and other requirements [40 CFR 122.44(k)].

3. Like individual permits, a violation of a condition contained in a general permit constitutes a violation of the Act and subjects the owner or operator of the permitted facility to the penalties specified in Section 309 of the Act.

IV. Permit Coverage

A. Who Needs To Be Covered by This Permit?

Part I.A. of the permit states that "A permit is required for discharges from operations classified as a CAFO." This is required pursuant to 40 CFR 122.2 which defines a CAFO as a point source and Section 402 of the Clean Water Act and 40 CFR 122.1(b) which requires that all discharges from any point source must be regulated by a National Pollutant Discharge Elimination System (NPDES) permit.

B. What Constitutes a Discharge?

In accordance with 40 CFR 122.2, a discharge is any addition of any pollutant or combination of pollutants to waters of the United States. This includes runoff from corrals, stock piled manure, or silage piles, overflow from storage ponds, overflow from animal watering systems which are contaminated by manure, and overflow from irrigated fields in which wastewater is applied at greater than the agronomic rate. As stated above, waters of the United States includes not only rivers, streams, intermittent streams and lakes, but also irrigation ditches, laterals, canals, etc. which eventually flow into rivers, streams, and lakes. [In *Re Bettencourt*, Docket # 1093-04-17-309(g), March 30, 1994, Order of Summary Determination, at 13-19.]

This permit only allows a discharge during certain storm events as established in part II.A. of the permit and only discharges resulting from the overflow from a control facility that is properly designed and operated. All

other discharges are not allowed under this permit.

C. How to Determine if an Animal Feeding Operation is a CAFO?

EPA's interpretation of the regulations pertaining to feeding operations divides the industry into two groups; CAFOs and non-CAFOs. As stated above, CAFOs are defined as point sources and are therefore, required to obtain an NPDES permit for any discharges. However, non-CAFOs are considered nonpoint sources and are not subject to the NPDES program.

Part I.C., VII, Appendix A, and Appendix B of the permit establish the definition of a CAFO. This definition is required pursuant to 40 CFR 122.23 and 40 CFR 122 Appendix B.

1. Animal Feeding Operation

For an operation to be a CAFO, the facility must first qualify as an animal feeding operation. An animal feeding operation is a facility where:

- Animals are kept a total of 45 days or more during any 12 month period, and
- Crops, vegetation forage growth, or post-harvest residues are not sustained during the normal growing season on the facility [40 CFR 122.23(b)(1)].

The first part of this definition means that animals must be fed or maintained on the lot or facility for a minimum of 45 days. However, it does not mean that the *same* animals must remain on the lot for 45 days or more; only that *some* animals are fed or maintained on the lot 45 days out of any 12 month period. The 45 days do not have to be consecutive, nor does the 12 month period have to correspond to the calendar year. For example, the 12 month period may be counted from June 1 to the following May 31. This can include areas such as corrals, pens, auction yards, etc.

The second part of this definition distinguishes feedlots from pasture land, which were not intended to be covered as a CAFO by the regulations. This part of the definition narrows the geographic scope of the regulations to the portion of the feedlot where animals are confined and where natural forage or planted vegetation does not occur during the normal growing season (for that geographic area). Feedlots with constructed floors, such as solid concrete or metal slats, clearly satisfy this part of the definition. Other feedlots may have open dirt areas. These "open dirt" feedlots may have some vegetation growth along the edges while animals are present or during months when animals are kept elsewhere. EPA

interprets the regulations to mean that if a facility maintains animals in an area without vegetation, including dirt-floored lots, the facility meets the second part of the definition.

Note: That although pasture land itself can not be classified as a CAFO, if these pastures are used as land application sites for CAFO waste, any waste water overflows from these pastures into receiving waters is considered a discharge.

2. CAFO Criteria

If a facility is an animal feeding operation as defined above, the next step is to determine if the operation is a CAFO. In general, there are three situations in which an animal feeding operation can be a CAFO.

The first is for large facilities. Any operation that confines more than the number of animals listed in 40 CFR 122 Appendix B(a) and Part VII.F.1. of the permit are CAFOs. For example, dairies with more than 700 mature dairy cows or feedlots with more than 1000 feeders are considered to be CAFOs.

The second category is for medium sized animal feeding operations which contain the number of animals listed in 40 CFR 122 Appendix B(b) and Part VII.F.2. of the permit. In addition to the size of the operation, the method of discharge is also considered. For medium sized animal feeding operations, the discharge must be through a man-made conveyance or discharged directly into waters of the United States [40 CFR 122 Appendix B(b)]. Man-made conveyance is the transport of wastewater off the property into waters of the United States through a pipe, ditch, lateral, channel gully, etc. Direct discharge occurs when a stream, creek, or other water body runs through the facility. Direct discharge is assumed if confined animals have direct access to these water bodies.

When trying to determine if your operation is a CAFO under this second category, keep in mind that a discharge through the means described does not have to be occurring at all times. If you think your animal feeding operation may have a discharge some time in the future, or if you had one in the past, through the means described above, then your operation is a CAFO.

The third scenario in which an animal feeding operation can become a CAFO is if the EPA Regional Administrator of Region 10 designates a facility as a significant contributor of pollutants (SCP) [40 CFR 122.23(c)]. This third scenario applies to facilities that are not covered by the first two scenarios and is an attempt to regulate smaller, problem facilities. This designation is done on a case-by-case basis after an

inspection of the facility has been conducted. The facility must then be notified of this designation by the Director.

3. Animal Units

The number of animal units confined is another factor considered in determining whether a facility is a CAFO. "Animal unit" is a term defined by the regulations (40 CFR 122 Appendix B) and varies according to animal type; one animal is not always equal to one animal unit. Conversion to animal units is a procedure used to determine pollution equivalents among the different animal types; one dairy cow produces more waste than one sheep. This calculation is also used on facilities with more than one animal type onsite.

Animal Units are incorporated into the above definitions of a CAFO. Facilities with greater than 1000 animal units (large facilities) are CAFOs. Facilities with between 300 and 1000 animal units (medium sized facilities) and discharge through a man-made conveyance or discharge directly into waters of the United States are also CAFOs. Examples of animal unit calculations are included in Appendix A of the permit.

D. Permit Coverage

A Notice of Intent (NOI) to be covered under this General Permit is required for permit coverage [40 CFR 122.28(b)(i)]. The requirements are outlined in Part I.D. and Appendix C of the permit.

The regulations provide an exception to those feeding operations which intend to discharge *only* in the event of a 25-year, 24-hour storm event. The regulations state that these facilities are not CAFOs (40 CFR 122 Appendix B) and, as a result are not subject to regulation under this permit. However, EPA recommends, as a precaution, that all facilities that are classified as CAFOs by meeting the specifications described above in paragraphs IV.C.1, 2, or 3, obtain permit coverage even though they fully expect not to ever have a discharge. An example given in the *Guidance Manual on NPDES Regulations for Concentrated Animal Feeding Operations* is as follows:

An unpermitted facility that could be classified as a CAFO has waste handling facilities to contain the process generated wastewater plus the runoff from a 25-year, 24-hour rain fall event plus three inches of runoff from accumulation of winter precipitation. It rains heavily for three weeks, but the rainfall in any 24-hour period never exceeds the 25-year, 24-hour storm event. The facility's waste handling facilities reaches capacity and overflows, discharging to waters of the United States. The facility

has violated the CWA. If the facility had had a permit, it would *not* have been in violation of the CWA.

E. Permit Expiration

Part I.E. of the permit specifies that the permit is effective for five years. This is required in accordance with 40 CFR 122.46(a).

V. Permit Requirements

A. Basis of Discharge Limitations

1. Statutory Requirements

Section 301(a) of the Act prohibits the discharge of any pollutant to waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act.

It is specified in the Act that issued NPDES permits must contain effluent limitations reflecting the most stringent of (1) receiving water quality standards established pursuant to state law or regulations and (2) technology-based effluent guidelines established by EPA to achieve certain levels of wastewater treatment technology. In accordance with Section 301 of the Act, the technology levels applicable to CAFOs are Best Practicable Control Technology Currently Available (BPT) and Best Available Technology Economically Achievable (BAT). In addition, Section 306 of the Act requires the achievement by new source dischargers of the best available demonstrated control technology or New Source Performance Standards (NSPS).

Technology-based requirements may be established through one of two methods: (1) Application of national effluent limitations guidelines promulgated by EPA under Section 304 of the Act and NSPS promulgated under Section 306 of the Act; and (2) on a case-by-case basis under Section 402(a)(1) of the Act and 40 CFR 125.3, using Best Professional Judgement (BPJ), for pollutants or classes of discharges for which EPA has not promulgated national effluent limitations guidelines.

Based on national effluent limitations guidelines and 40 CFR 125.3, this permit establishes a "no discharge" effluent limitation for CAFOs. Discharges are allowed, however, only during chronic or catastrophic rainfall events from a facility that is designed to store all generated process wastewater; plus, all contaminated runoff from a 25-year, 24-hour rainfall event; plus, three inches of runoff from the accumulation of winter precipitation; or the amount of runoff from the accumulation of precipitation from a one in five year winter.

In many cases, the technology utilized to achieve no discharge is containment of all contaminated liquid runoff resulting from rainfall, snowmelt, or related cause, and application of these liquids, along with the generated solid wastes to productive cropland at a rate which will provide moisture and nutrients that can be utilized by the crops. To implement this technology requires provisions for containment such as a lagoon. Provisions must also be made for land application of the wastes onto the crop land such as by sprinklers.

2. Technology-Based Limitations

In March 1976, EPA published national effluent guidelines for CAFO operations greater than 1000 animal units. The national effluent guidelines established BPT, BAT, and NSPS. The technology-based effluent limitation established by the national effluent guidelines specifies that "there shall be no discharge of process waste water pollutants to navigable waters" (40 CFR 412). However, the guidelines do allow a discharge whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour, storm.

According to the Development Document, the use of wastewater containment plus the application of waste to productive cropland can achieve the stated goal of "no discharge" of pollutants to waters of the United States.

Effluent limitation guidelines have not yet been established for CAFO operations consisting of less than 1000 animal units. However, the EPA has determined to regulate these smaller CAFO operations due to the potential water quality impacts which can be caused by these facilities. According to the EA, animal waste contains a number of pollutants which can impact water quality. The most commonly recognized contaminants are suspended solids and organics, bacteria, and nutrients. These pollutants have been observed to cause a number of water quality problems.

As a result, the EPA has established technology based effluent limitations for these smaller facilities based on BPJ. The effluent limitation established based on BPJ for CAFOs with less than 1000 animal units shall be identical to that established in the national effluent guidelines required for the larger facilities.

An economic analysis was done when the technology-based requirements for the national effluent guidelines (40 CFR

412) were published. Region 10 believes that the same economic and technology rationale would apply to the smaller facilities covered by this permit. Also, Region 10 believes that the requirement of "no discharge", achieved through the utilization of waste containment plus land application is the most economical option available to the smaller facilities which will prevent water quality problems.

If, however, any facilities with less than 1000 animal units believe that the economic analysis for the national effluent guidelines would not apply to their facility and that they would be able to achieve necessary water quality requirements of the receiving stream, through the use of biological or equivalent treatment systems, those facilities may apply for individual permit coverage.

3. Water Quality Based Limitations

In addition to technology-based controls, Section 301(b) of the CWA also requires that NPDES permits must include any conditions more stringent than technology-based controls necessary to meet State water quality standards. Water quality-based requirements are established under this provision on a case-by-case basis.

Receiving waters within the scope of this permit are classified by the Idaho State Water Quality Standards for use in agricultural water supply, domestic water supply, protection and maintenance of cold and warm water biota, salmonid spawning, and primary and secondary contact recreation (Idaho Department of Health and Welfare Rules, IDAPA 16.01.02.100.101-.160).

The State water quality parameters which could be affected by these discharges are floating, suspended, or submerged matter, excess nutrients, oxygen-demanding materials, sediment, and fecal coliforms (Idaho Department of Health and Welfare Rules, IDAPA 16.01.02.200.05-.08).

Water quality-based requirements have been established in the permit. In addition to containing all process generated wastewater and the runoff from a 25-year, 24-hour rainfall event (technology-based requirement), the permit also requires the additional containment of three inches of winter precipitation or the amount of runoff from the accumulation of precipitation from the one in five year winter. This additional containment is required based on information presented in the EA.

The rationale presented in the EA for the additional volume is that the technology-based requirements have been found insufficient in many colder

states because they did not take into account the effects of frozen ground. The water quality degradation from animal confinement areas occurs to the greatest extent primarily in winter and spring. During these periods, there is increased precipitation while soils are either likely to be frozen or saturated. Both conditions decrease soil infiltration capacity. Greater runoff quantities are likely to be generated, but less than normal amounts of water can be retained on-site. In Idaho, climatic conditions indicate at least a 4-month holding period is necessary.

The proposed permit requires facilities to accommodate process waste, runoff from a 25-year, 24-hour storm event, and 3 inches of runoff which is approximately equal to runoff expected from 4 months of winter runoff as expected from a 1- in 5-year winter. This provision was deemed appropriate as a result of data and analyses presented in the EA. According to this EA:

- The retention of runoff from winter precipitation will significantly benefit water quality. Snowmelt, especially when combined with a rainfall event, could wash manure-laden water directly into the streams without this allowance.
- Soil remains frozen for four months in many areas of Idaho. During this time, control facilities cannot be pumped out onto fields for land application. Retention of winter precipitation would accommodate this constraint.
- The results of an analysis performed for the EA indicate that the retention of three inches of net spring runoff is adequate to protect water quality.

B. Best Management Practices (BMP)

BMP conditions in Part II.B. of the proposed permit were developed pursuant to Section 304(e) of the Act and 40 CFR 122.44(k)(3). BMPs are used in conjunction with technology-based and water-quality based effluent limitations. BMPs are appropriate when numeric effluent limitations are infeasible or the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Act.

BMPs can describe a wide range of management procedures, schedules of activities, prohibitions on practices, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include operating procedures, treatment requirements and practices to control feedlot runoff, drainage from raw materials, spills or leaks.

Part II.B. of the permit requires the implementation of management

practices referenced in the "Idaho Waste Management Guidelines for Confined Feeding Operations". These management practices include, but are not limited to, the following:

- Minimizing wastewater volumes by diverting uncontaminated surface runoff from entering the CAFO; by water conservation whenever possible; and by roof construction to exclude precipitation whenever possible.
- Management of precipitation runoff by site selection for corrals so that runoff can be easily collected; by providing buffer zones around land application sites, etc.
- Assure adequate waste system design and operation by assuring that the waste storage ponds are adequately sized to contain the waste produced; by assuring that adequate land is available to land apply the waste materials; etc.

Part II.B. of the permit also specifies additional management practices. The purpose of these management practices are explained below.

1. Design of Control Facilities

This management practice requires that any waste storage ponds built after the issuance of this permit or any existing waste storage pond which is modified in any way (enlarged, or in any way redesigned) shall be built following the "Idaho Waste Management Guidelines for Confined Feeding Operations" and the most recent edition of the Natural Resource Conservation Service (NRCS) National Handbook of Conservation Practices and associated State Addenda, SCS Technical Note #716. This may require the incorporation of a liner. The purpose of this management practice is to reduce the amount of pollutants seeping from the lagoon and eventually reaching waters of the United States.

Note That plans and specifications for these new or redesigned facilities must be submitted to the Idaho Department of Health and Welfare, Division of Environmental Quality for review and approval prior to construction.

2. Facility Expansion

This management practice requires that before a CAFO is expanded to include more animals or covers more area, the waste handling system must first be upgraded to handle the additional waste generated.

3. Chemical Handling

The purpose of this practice is to assure that any toxic chemicals such as pesticides are handled and disposed of

properly such that discharges to waters of the United States are prevented.

4. Access Restriction

This practice prevents direct contact of confined animals to waters of the United States. This requires that confined animals be separated from any surface waters (including irrigation ditches). The provisions of the permit cannot be met without this restriction because discharges would enter navigable waters directly from the animals during subchronic and subcatastrophic rainfall events. In addition, such discharges would be in direct violation of Section 301(a) of the Act.

This provision does not apply to cattle that are outside the CAFO boundary. For example, cattle that are out on pasture that is outside the boundary of the CAFO are not required to be restricted from waters of the United States by this permit.

5. Land Application

Part II.B.5. of the proposed permit requires that any solid or liquid wastes from a CAFO which is land applied must be applied at agronomic rates. This means that the application rate must not exceed that rate which will provide the crop or forage growth with needed nutrients for optimum health and growth.

The purpose of this requirement is to limit the amount of nutrients to that required by crops and to prevent the use of these fields as disposal sites. Fields with nutrient amounts in excess of agronomic rates are more likely to discharge pollutants into waters of the United States.

C. Prohibitions

Part II.C. of the proposed permit identifies discharges which are not authorized by this permit. These prohibitions are identified below.

—*Part II.C.1.* prohibits the discharge into waters of the United States of any substance from a CAFO which is not considered process wastewater. Process wastewater is defined in Part VII.M. of the proposed permit. The purpose of this prohibition is to assure that pollutants, other than that associated with CAFO operations, do not enter waters of the United States. This prohibition is required pursuant to Section 304(e) of the Act and 40 CFR 122.44(k)(3).

—*Part II.C.2.* of the proposed permit prohibits the discharge of process wastewater to waters of the United States by means of a hydrologic connection. This means that discharges that enter surface waters

indirectly through groundwater are prohibited. An example of such a discharge is a leak from a control facility which enters groundwater and eventually enters surface water through a connection. This prohibition is required in order to be in compliance with the effluent limitation of "no discharge" established in this permit. In addition, the following decisions support the definition of a hydrologic connection as a discharge to waters of the United States:

- McClellan Ecological Seepage v. Weinberger*, 707 F. Supp. 1182, 1194 (E.D. Cal. 1988) (EPA has no statutory authority to regulate discharges to isolated wetlands; cites substantial legislative history; where hydrologic connection exists between groundwater and surface waters, however, NPDES permit may be required);
- Sierra Club v. Colorado Refining Co.*, Civ. No. CIV.A.93-K-1713 (D. Col. Dec. 8, 1993) ("[The] Clean Water Act's preclusion of the discharge of any pollutant into 'navigable waters' includes such discharge which reaches 'navigable waters' through groundwater.");
- Leslie Salt Co. v. United States*, 896 F.2d 354, 358 (9th Cir. 1990) (CWA jurisdiction existed over salt flat even though hydrologic connection between salt flat and navigable waters was man-made; "The fact that third parties, including the government, are responsible for flooding Leslie's property is irrelevant. The Corps' jurisdiction does not depend on how the property at issue became a water of the United States. Congress intended to regulate local aquatic ecosystems regardless of their origin.").

The control of such discharges are best handled in the design phase of the control facility. The NPDES permit requires the use of the *Idaho Waste Management Guidelines for confined Feeding Operations* when designing control facilities. In certain areas the use of liners may be required as part of control facility construction.

- Part II.C.3.* of the proposed permit prohibits the discharge of land applied wastes to waters of the United States. The purpose of this prohibition is to prevent wastewater pollutants from entering waters of the United States. For example, wastewater must not be applied at such a rate that runoff from the applied fields is entering waters of the United States. This provision also applies when the ground is saturated

from precipitation or frozen and wastewater is being applied resulting in runoff entering waters of the United States.

VI. Basis for Monitoring and Reporting Requirements

A. Notice of Intent

Part I.D. of the permit requires that a Notice of Intent (NOI) be submitted to EPA and the State. The NOI fulfills the application requirements for CAFOs in accordance with 40 CFR 122.21(i).

B. Discharge Notification

Parts II.D. and IV. of the permit identify the monitoring and reporting requirements for CAFOs. These parts require the permittee to report to EPA, by phone, within 24-hours, any discharge from the CAFO to Waters of the United States. The permittee is also required to submit a written report to EPA and the Idaho Department of Health and Welfare Division of Environmental Quality within five days of the discharge. These notification requirements are in accordance with 40 CFR 122.44(i), 122.41(l)(4), and 122.41(l)(6).

The required monitoring reports differ from those described in 40 CFR 122.41(l)(4) as follows:

- The Discharge Monitoring Report (DMR) forms have been determined to be inappropriate for the type of monitoring information required from the permitted facilities, and will not be used.
- No calculations are required to meet permit effluent limitations.

VII. Limitations of the General Permit

A. Limitations on Coverage

In accordance with Part 122.28, the Director may determine that the General Permit is inappropriate for certain facilities. This can occur in situations where the permittee is not in compliance with the General Permit or if more stringent requirements are necessary to achieve state water quality standards.

The General Permit may also be inappropriate for CAFOs that discharge into sanitary sewer systems. In this case, it is the sanitary system that is discharging and therefore requires a permit.

Discharges from duck feeding operations established prior to 1974 are also not covered by this General Permit.

B. Individual Permits

Part III.B. of the permit establishes the circumstances in which an individual permit (instead of the General Permit) may be appropriate. These provisions

are included in the permit pursuant to 40 CFR 122.28.

VIII. Other Requirements

A. Endangered Species Act

Formal consultation is not necessary for CAFOs covered by this general permit since this is a no discharge permit. Endangered species should not be impacted by surface water discharges from facilities in compliance with this permit.

B. State Certification

Section 301(b)(1)(c) of the Act requires that an NPDES permit contain conditions which ensure compliance with applicable State water quality standards or limitations. Section 401 requires that States certify that Federally issued permits are in compliance with State law. No permits can be issued until the requirements of Section 402 are satisfied. Therefore, EPA is requesting the State of Idaho Department of Health and Welfare to provide appropriate certification for the draft general permit pursuant to 40 CFR 124.53.

Authorization to Discharge Under the National Pollutant Discharge Elimination System (NPDES) for Concentrated Animal Feeding Operations (CAFO)

General Permit No.: IDG010000

In compliance with the provisions of the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act":

Owners and operators of CAFOs except those sites excluded from coverage in Part I of this NPDES permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A COPY OF THIS GENERAL PERMIT MUST BE KEPT AT THE SITE OF THE CAFO AT ALL TIMES.

This permit will become effective _____.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire 5 years after the effective date of this permit.

Signed this _____ day of August 1995.
Janis Hastings,

Acting Director, Water Division, Region 10.

I. Permit Coverage

- A. Who needs to be covered by this permit?
- B. What constitutes a discharge?
- C. How to determine if your animal feeding operation is a CAFO?
- D. How to apply for permit coverage?
- E. Permit Expiration

II. Permit Requirements

- A. Discharge Limitations
- B. Best Management Practice (BMP)
 1. Design of Control Facilities
 2. Facility Expansion
 3. Chemical Handling
 4. Access Restriction

5. Land Application
 6. Emergency Operation and Maintenance
- C. Prohibitions
 - D. Discharge Monitoring and Notification

III. Limitations of the General Permit

- A. Limitations on Coverage
- B. Requiring an Individual Permit

IV. Monitoring, Reporting and Recording Requirements

- A. When to Report?
- B. What to report?
- C. Other Noncompliance Reporting
- D. Inspection and Entry

V. Compliance Responsibilities

- A. Duty to Comply
- B. Penalties for Violations of Permit Conditions
 1. Administrative Penalty
 2. Civil Penalty
 3. Criminal Penalties
 - a. Negligent Violations
 - b. Knowing Violations
 - c. Knowing Endangerment
 - d. False Statements
- C. Need to Halt or Reduce Activity not a Defense
- D. Duty to Mitigate
- E. Proper Operation and Maintenance
- F. Removed Substances
- G. Toxic Pollutants

VI. General Requirements

- A. Anticipated Noncompliance
- B. Permit Actions
- C. Duty to Reapply
- D. Duty to Provide Information
- E. Other Information
- F. Signatory Requirements
- G. Availability of Reports
- H. Oil and Hazardous Substance Liability
- I. Property Rights
- J. Severability
- K. State Laws
- L. Paperwork Reduction Act

VII. Definitions

I. Permit Coverage

A. Who Needs To Be Covered by This Permit?

A permit is required for discharges of process wastewater from all operations classified as a Concentrated Animal Feeding Operation (CAFO).

B. What Constitutes a Discharge?

This permit does not allow the discharge of process wastewater except in accordance with Part II.A. of this permit.

A discharge of process wastewater is the release of pollutants from a CAFO which enters surface waters such as a river, stream, creek, lake, or other waters of the United States. Process wastewaters include, but are not limited to, the following:

- Runoff from corrals, stock piled manure, and silage piles;
- Overflow from storage ponds; and
- Runoff from irrigated fields in which wastewater is applied at greater than agronomic rates.

C. How To Determine If Your Animal Feeding Operation Is a CAFO?

Review the following questions to determine if your facility is a CAFO.

1. Do you operate a facility where animals are confined and fed or maintained?

If yes, proceed to next question. If no, your facility is not a CAFO.

2. Are animals confined and fed or maintained for a total of 45 days or more in any 12 month period?

If yes, proceed to next question. If no, your facility is not a CAFO.

3. Do any crops or vegetation exist in the confinement lot or facility?

If no, proceed to next question. If yes, your facility is not a CAFO.

4. Does your facility confine greater than the following number of animals:

—700 mature dairy cattle,

—1000 slaughter or feeder cattle, or

—1000 animal units (See Appendix A for details)?

If yes, your facility is a CAFO. If no, proceed to next question.

5. Does your facility confine the following number of animals:

—between 200 and 700 mature dairy cattle,

—between 300 and 1000 slaughter or feeder cattle, or

—between 300 and 1000 animal units (See Appendix A for details)?

If yes, proceed to question 7. If no, proceed to next question.

6. For facilities with less than the animals established in Question 5. above, have you been notified by EPA, after an inspection, that your facility has been designated a CAFO? See Appendix B for details on significant contributors of pollution.

If yes, your facility is a CAFO.

7. Does your facility discharge directly into rivers, streams, creeks or other waters of the United States?

If yes, your facility is a CAFO. If no, proceed to next question.

8. Does your facility discharge through a man-made device such as a pipe, ditch, or field overflow from land application, into a river, stream, creek or other waters of the United States?

If yes, your facility is a CAFO. If no, your facility is not a CAFO.

9. Have you been otherwise notified by EPA that your facility is a CAFO? If yes, your facility is a CAFO. (The Regulations state that "the Director may designate any animal feeding operation as a CAFO upon determining that it is a significant contributor of pollution to the waters of the United States.")

If you answered Yes to questions 4, 6, 7, 8 or 9 above, your facility is a CAFO.

See Part VII. of this permit for more details on the definition of a CAFO.

D. Permit Coverage

1. Owners or operators of CAFOs must submit an application (also known as a Notice of Intent) to the Environmental Protection Agency (EPA) to obtain coverage under this permit. A list of information required for a complete application can be found in Appendix C of this permit.

2. The application shall be signed by the owner or other authorized person in accordance with Part VI.F. of this permit.

3. The application must be submitted to EPA at least 90 days prior to discharge. Coverage under this permit requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the CAFO.

4. Signed copies of the application shall be sent to: U.S. EPA Region 10, WD-134 CAFO NOI, 1200 Sixth Avenue, Seattle, Washington 98101.

5. CAFOs in Idaho must also send a copy of the application to: Idaho State Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255.

E. Permit Expiration

Coverage under this permit will expire five (5) years from the date of issuance.

II. Permit Requirements

A. Discharge Limitations

There shall be no discharge of process wastewater to waters of the United States except when precipitation events cause an overflow of process wastewater from a control facility properly designed, constructed, maintained, and operated to contain:

1. All process generated wastewater resulting from the operation of the CAFO (such as wash water, parlor water, watering system overflow, etc.); plus,

2. All the contaminated runoff from a 25-year, 24-hour rainfall event; plus,

3. a. Three inches of runoff from the accumulation of winter precipitation; or

b. The amount of runoff from the accumulation of precipitation from a one in five year winter.

B. Best Management Practice (BMP)

At a minimum, the management practices established in the *Idaho State Waste Management Guidelines for Animal Feeding Operations* and the BMPs listed below shall be implemented to prevent contamination of waters of the United States:

1. Design of Control Facilities

All control facilities constructed after the issuance date of this permit or any existing control facility which is redesigned and modified in any way after the issuance of this permit shall be designed, constructed and maintained in accordance with the *Idaho State Waste Management Guidelines for Animal Feeding Operations* and the most recent edition of the Natural Resource Conservation Service (NRCS) *National Handbook of Conservation Practices and associated State Addenda*, SCS Technical Note #716. *Plans and specifications for these control facilities shall be submitted to the Idaho Department of Health and Welfare Division of Environmental Quality (IDHW-DEQ) for review and approval prior to construction.*

2. Facility Expansion

CAFO operations shall not be expanded, either in size or numbers of animals, unless the waste handling procedures and structures are adequate to accommodate any additional wastes that will be generated by the

expanded operations. Such expansion shall be consistent with the *Idaho State Waste Management Guidelines for Animal Feeding Operations*.

3. Chemical Handling

All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent any pollutants from entering the waters of the United States.

4. Access Restriction

No flowing surface waters (e.g. rivers, streams, or other waters of the United States) shall come into direct contact with the animals confined on the CAFO. Fences may be used to restrict such access.

5. Land Application

Land application of process wastewater, control facility solids, and/or manures (land application materials) shall be applied at agronomic rates and conducted in accordance with the *Idaho State Waste Management Guidelines for Animal Feeding Operations* or other guidance approved by the IDHW-DEQ.

6. Emergency Operation and Maintenance

It shall be considered "Proper Operation and Maintenance" for a control facility which has been properly maintained and is otherwise in compliance with the permit, and that is in danger of imminent overflow due to chronic or catastrophic rainfall, to discharge process wastewaters to land application sites for filtering. The volume discharged during such an event shall be limited to that amount reasonably expected to overflow from the waste storage pond. Such discharges shall be reported to EPA in accordance with Part IV of the permit.

C. Prohibitions

1. The discharge of any materials or substance other than process wastewater is strictly prohibited by this permit.

2. Discharges of process wastewaters to waters of the United States by means of a hydrologic connection is prohibited.

3. The discharge or drainage of land applied wastes (solid or liquid) from land applied areas to waters of the United States is prohibited.

D. Discharge Monitoring and Notification

If, for any reason, there is a discharge to a water of the United States, the permittee is required to monitor and report as established in Part IV. of this permit.

Discharge flow and volume from a CAFO may be estimated if measurement is impracticable.

III. Limitations of the General Permit

A. Limitations on Coverage

The following CAFOs are *not covered* by this permit:

1. CAFOs which have been notified by the Director to file for an individual permit in accordance with Part III.B. of this permit.

2. CAFOs that discharge all process wastewater to a publicly owned sanitary sewer system which operates in accordance with an NPDES permit.

3. Concentrated Duck feeding operations established prior to 1974.

B. Requiring an Individual Permit

1. The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. The Director will notify the owner or operator in writing that an individual permit application is required. If an owner or operator fails to submit the permit application by the date specified in the Director's written notification, then coverage by this general permit is automatically terminated.

2. Any owner or operator covered by this permit may request to be excluded from the permit coverage by applying for an individual permit. The owner or operator shall submit an individual application (Form 1 and Form 2B) to the Director with reasons supporting the request.

3. When an individual NPDES permit is issued to an owner or operator otherwise covered by this permit, coverage by this permit is automatically terminated on the effective date of the individual permit.

4. When an individual NPDES permit is denied to an owner or operator otherwise covered by this permit, coverage by this permit is automatically reinstated on the date of such denial, unless otherwise specified by the Director.

IV. Monitoring, Reporting and Recording Requirements

A. When to Report?

If, for any reason, there is a discharge to a water of the United States, the permittee is required to:

1. Verbally notify the EPA of the discharge at (206) 553-1669 within 24 hours, and
2. Notify the EPA and the State of the discharge in writing within 5 days of the discharge. Written notification shall be sent to the addresses identified in Part I.D. of this permit.

B. What to Report?

The information required for notification shall include:

1. A description and cause of the discharge, including a description of the flow path to the receiving water body. Also, an estimation of the duration of the flow and volume discharged.
2. The dates and times of the discharge, and, if not corrected, the anticipated time the discharge is expected to continue, as well as procedures implemented to prevent the recurrence of the discharge.
3. If caused by a precipitation event(s), information from the National Weather Service concerning the size of the precipitation event.
4. If any samples are collected and analyzed the written report shall also include the following:
 - 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 analytical techniques or methods used; and
 - e. The results of such analyses.
5. The Director may waive the written report on a case-by-case basis if an oral report

has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 553-1669.

6. Any reports submitted to EPA must be signed by the owner or authorized person in accordance with Part VI.F. of the permit.

C. Other Noncompliance Reporting

Instances of noncompliance not required to be reported in Part IV.A. of this permit shall be reported in writing within 5 days after the permittee becomes aware of the violation. The reports shall contain the information listed in Part IV.B. of this permit.

D. 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 the presentation of credentials and other documents as may be required by law, to:

1. 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;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

V. Compliance Responsibilities

A. Duty to Comply

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, or modification; or for denial of a permit renewal application.

B. Penalties for Violations of Permit Conditions

1. Administrative Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to an administrative penalty, not to exceed \$10,000 per day for each violation.

2. Civil Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed \$25,000 per day for each violation.

3. Criminal Penalties:

a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301,

302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than \$1,000,000.

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 this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or by both.

Nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. 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.

F. Removed Substances

Solids, sludges, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner so as to prevent any pollutant from such materials from entering waters of the United States.

G. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

VI. General Requirements

A. Anticipated Noncompliance

The permittee shall also give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

C. 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 a new permit by resubmitting the information in Appendix C of this permit. The application should be submitted at least 180 days before the expiration date of this permit.

D. Duty To Provide Information

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.

E. Other Information

When 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 any report to the Director, it shall promptly submit such facts or information.

F. Signatory Requirements

All applications, reports or information submitted to the Director shall be signed and certified.

1. All permit applications shall be signed as follows:

- a. For a corporation: by a responsible corporate officer.
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
- c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director 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 and submitted to the Director, and
- b. The authorization specified 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 an individual or position having overall responsibility for

environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph VI.F.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph VI.F.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. 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

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

H. Oil and Hazardous Substance Liability

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 to which the permittee is or may be subject under Section 311 of the Act.

I. Property Rights

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 or local laws or regulations.

J. Severability

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.

K. State Laws

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 law or regulation under authority preserved by Section 510 of the Act.

L. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submission made for the NPDES permit program under the provisions of the CWA.

VII. Definitions

A. *25-Year, 24-Hour Rainfall Event* means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

B. *Administrator* means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

C. *Agronomic Rates* means the land application of animal wastes at rates of application which provide the crop or forage growth with needed nutrients for optimum health and growth.

D. *Animal feeding operation* means a lot or facility (other than an aquatic animal production facility) where 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 the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.

E. *Animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

The director may establish other animal unit factors for animal types not listed above.

F. *Application* means a written "notice of intent" pursuant to 40 CFR 122.28.

G. *Best Management Practices (BMPs)* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States". BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

H. *Concentrated Animal Feeding Operation (CAFO)* means an "animal feeding operation" which meets the criteria in 40 CFR Part 122, Appendix B, or which the Director designates as a significant contributor of pollution pursuant to 40 CFR 122.23 (c). Animal feeding operations

defined as "concentrated" in 40 CFR 122 Appendix B are as follows:

1. New and existing operations which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

- a. 1,000 slaughter or feeder cattle;
- b. 700 mature dairy cattle (whether milkers or dry cows);
- c. 2,500 swine weighing over 55 pounds each;
- d. 500 horses;
- e. 10,000 sheep or lambs;
- f. 55,000 turkeys;
- g. 100,000 laying hens or broilers when the facility has unlimited continuous low watering systems;
- h. 30,000 laying hens or broilers when facility has liquid manure handling system;
- i. 5,000 ducks; or
- j. 1,000 animal units.

2. New and existing operations which discharge pollutants into waters of the United States either through a man-made ditch, flushing system, or other similar man-made device, or directly into waters of the United States, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

- a. 300 slaughter or feeder cattle;
- b. 200 mature dairy cattle (whether milkers or dry cows);
- c. 750 swine weighing over 55 pounds;
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,000 turkeys;
- g. 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
- h. 9,000 laying hens or broilers when facility has a liquid manure handling system;
- i. 1,500 ducks; or
- j. 300 animal units (from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep).

Provided, however, that no animal feeding operation is a CAFO as defined above if such animal feeding operation discharges only in the event of a 25-year, 24-hour storm event.

I. *Control Facility* means any system used for the retention of all wastes on the premises until their ultimate disposal. This includes the retention of manure, liquid waste, and runoff from the feedlot area.

J. *Director* means the Regional Administrator of EPA.

K. *Feedlot* means a concentrated, confined animal or poultry growing operation for meat, milk, or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth or production is not sustained in the area of confinement.

L. *Ground Water* means any subsurface waters.

M. *Hydrologic Connection* means the flow between surface impoundments and surface water by means of a subsurface conveyance.

N. *Land Application* means the removal of wastewater and waste solids from a control facility and distribution to, or incorporation into the soil.

O. *Process Wastewater* means any process generated wastewater directly or indirectly

used in the operation of a feedlot (such as spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact swimming, washing, or spray cooling of animals; and dust control) and any precipitation which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

P. *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.

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

R. *Toxic Pollutants* mean any pollutant listed as toxic under section 307(a)(1) of the Act.

S. *Waters of the United States*. See 40 CFR 122.2.

Appendix A

Animal Units Calculations

"Animal unit" is a term defined by the regulations and varies according to animal type; one animal is not always equal to one animal unit. Conversion to animal units is a procedure used to determine pollution equivalents among the different animal types; dairy cows produce more waste than sheep. This calculation is used on facilities with more than one animal type onsite.

The number of animal units is calculated as follows:

- number of slaughter and feeder cattle multiplied by 1.0, plus,
- number of mature dairy cattle multiplied by 1.4, plus,
- number of dairy heifers cattle multiplied by 1.0, plus,
- number of swine weighing over 55 pounds multiplied by 0.4, plus,
- number of sheep multiplied by 0.1, plus,
- number of horses multiplied by 2.0.

Example 1: Determine the number of animal units on a dairy operation which maintains 650 mature dairy cows and 300 dairy heifers.

$$[(\# \text{ mature cows})(1.4) + (\# \text{ heifers})(1.0)] = \text{animal units} \\ [(650 \times 1.4) + (300 \times 1.0)] = 1210 \text{ animal units.}$$

Such a facility exceeds the 1000 animal units as established in Part I.C.4. of this permit, thus this facility is a CAFO and is subject to NPDES requirements.

Example 2: Determine the number of animal units on a feeding operation which maintains 650 slaughter cattle, 100 horses, and 1000 sheep.

$$[(650 \times 1.0) + (100 \times 2) + (1000 \times 0.1)] = 950 \text{ animal units.}$$

This facility does not exceed the 1000 animal units required to be a CAFO in Part

I.C.4. of this permit. However, it can be classified as a CAFO under Part I.C.5. of this permit if pollutants are discharged through a man-made conveyance or if pollutants are discharged directly to waters of the U.S. If this situation occurs, discharges are subject to NPDES requirements.

Appendix B

Significant Contributor of Pollutants

Definition

"Significant Contributor of Pollutants" (SCP) is a designation of an animal feeding operation made by the Director on a case-by-case basis. The purpose of this designation is to regulate animal feeding operations that are not automatically classified as CAFOs in Part I.C. of the permit and have the potential of causing environmental harm.

Designation Procedure

—SCP determinations can only be conducted after an onsite inspection.

—The following factors are considered when making an SCP determination:

- a. The size of the animal feeding operation and the amount of wastes reaching waters of the United States,
- b. The location of the animal feeding operation relative to waters of the United States,
- c. The means of conveyance of animal wastes and process wastewater to waters of the United States,
- d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewater into waters of the United States, and
- e. Other relevant factors.

—An animal feeding operation is a CAFO upon notification by the Director.

Appendix C

Notice of Intent (Application) Information Requirements

The Application to be covered by this permit shall include the following:

1. Previous NPDES permit number if applicable,
2. Facility owner's name, address and telephone number,
3. Facility operator's name, address and telephone number,
4. Types of waste handling practices currently used for processing wastes (such as containment in a waste storage pond plus land application),
5. Name of receiving water(s) to which wastewaters are (or may be) discharged from the facility (receiving waters include canals, laterals, rivers, streams, etc.),
6. The type and number of animals confined, and
7. A sketch of the operation, including control facilities, diversion ditches, building structures, feeding areas, slope, direction of overland and surface water flow, and proximity to surface waters.

[FR Doc. 95-21173 Filed 8-25-95; 8:45 am]

BILLING CODE 6560-50-P