FACT SHEET

United States Environmental Protection Agency (EPA)
Region 10
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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 4:00 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.

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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 <u>not</u> 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. <u>Permit Requirements</u>

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.