

Tuesday through Sunday, 9 a.m. to 3 p.m., weather permitting.

In addition to these pump-out facilities, there is a town comfort station located on the Allen harbor town boat ramp parking area, and the Saquatucket Municipal Marina has on-shore bathroom and shower facilities available 24 hours a day. There are also private facilities at the Allen Harbor Yacht Club.

The waste from stationary shore side pump-out facility at the Saquatucket Municipal Marina and the pump-out boat is collected and stored in a Department of Environmental Protection approved, 2,500 gallon tight tank. This tank is fitted with alarms that activate in time to ensure waste removal long before the capacity is reached. The town of Harwich has an annual agreement with a licensed waste hauler to pump-out, on demand by the Harbormaster, and then transport the septage to the Town of Yarmouth's Sewage Treatment Facility. The Town Harwich has a contract with the Town of Yarmouth for the use of the Yarmouth-Dennis Septage Treatment Facility.

There are approximately 753 boats either moored or docked within Herring Creek, Allens Harbor, Wychmere Harbor and Saquatucket Harbor and are primarily "parking lot" harbors where the majority of boats are under 27 feet. Of these 735 boats there are 35 commercial fishing vessels, and an estimated transient population of 68 vessels.

The resources of the Herring Creek, Allens Harbor, Wychmere Harbor and Saquatucket Harbor are recreational and commercial. Wychmere Harbor is used by both recreational and commercial shell fishermen for the harvest of quahogs, clams, oysters, and bay scallops. Saquatucket Harbor is also used by both recreational and commercial shell fishermen for the harvest of quahogs, clams, oysters and is the site of the Town's commercial aquaculture operations. The beaches are located on the contiguous boundary with Nantucket Sound.

Comments and reviews regarding this request for action may be filed on or before July 27, 1998. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Ann Rodney, U.S. Environmental Protection Agency—New England Region, Water Quality Unit (CWQ), JFK Federal Building, Boston, MA 02203. Telephone: 617-565-4885. E-Mail: RODNEY.ANN@EPAMAIL.EPA.GOV.

Dated: June 17, 1998.

**John P. DeVillars,**

*Regional Administrator, Region I.*

[FR Doc. 98-16799 Filed 6-25-98; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6116-3]

### National Pollutant Discharge Elimination System (NPDES) General Permits for Discharges From Concentrated Animal Feeding Operations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed reissuance of NPDES general permits.

**SUMMARY:** Proposed reissuance of NPDES general permits for discharges from concentrated animal feeding operations (CAFOs) in (1) EPA Region 6 States of New Mexico (NMG800000), Oklahoma (OKG800000), and Texas (TXG800000); (2) all Indian Country Lands in Oklahoma, Texas, and New Mexico without certification authority; and (3) the following Indian Pueblos in New Mexico that have certification authority: Pueblo of Isleta, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of San Juan, Pueblo of Santa Clara, and Pueblo of Tesuque.

Also proposed in this action are watershed-specific NPDES general permits for CAFOs located in watersheds that have been impaired by CAFO-related activities in EPA Region 6 States of (1) New Mexico (NMG810000), Oklahoma (OKG810000), and Texas (TXG810000); (2) all Indian Country lands in Oklahoma, Texas, and New Mexico without certification authority; and (3) the following Indian Pueblos in New Mexico that have certification authority: Pueblo of Isleta, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of San Juan, Pueblo of Santa Clara, and Pueblo of Tesuque.

EPA Region 6 today proposes to (1) reissue NPDES general permits authorizing limited discharges from CAFOs in New Mexico, Oklahoma, and Texas; and (2) issue new NPDES general permits for all CAFOs within these States that are located in watersheds impaired by CAFO-related activities. The permits' requirements are based on NPDES regulations (40 CFR Parts 122 and 412). As proposed, the general permits prohibit discharges of process wastewater pollutants from CAFOs to waters of the United States except

during catastrophic or chronic rainfall events. When effective, these permits will replace the general permits published at 58 FR 7610 (February 8, 1993). The requirements of the watershed-specific permits are designed to protect nutrient-impaired watersheds against further degradation and nutrient pollution resulting from CAFO-related activities, such as manure and wastewater land application activities and offsite land disposal of manure at rates that exceed crop agronomic requirements.

**DATES:** Written comments on this proposal may be submitted to EPA Region 6 until August 25, 1998.

**ADDRESSES:** Comments to EPA should be mailed to Ms. Wilma Turner (6WQ-CA), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. The public record is located at the EPA Region 6 office, and is available upon request. Requests for copies of the public record should be addressed to Ms. Wilma Turner at the address provided above. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For further information on the proposed draft permits or to request for a complete copy of the entire fact sheet and draft general permits, contact Ms. Wilma Turner at the address provided above or by telephone at (214) 665-7513. Also, the draft permits and the fact sheet can be obtained from the Internet at the following website address: [www.epa.gov/region6/6wq/npdes/publicnotice.htm](http://www.epa.gov/region6/6wq/npdes/publicnotice.htm).

#### SUPPLEMENTARY INFORMATION:

##### Public Hearings

Informal Public Meetings and formal Public Hearings will be held in New Mexico, Oklahoma, and Texas to provide information on the draft permit conditions and to allow for public comment on the draft permits. Informal public meetings with question and answer sessions are scheduled, prior to each of the formal Public Hearings, to allow the public to make informal statements and comments before the formal Public Hearing sessions begin. The schedule for informal meetings and formal public hearings are as follows:

*Monday August 3, 1998:* Informal Public Meeting with question and answer session from 9:00 a.m. to 11:00 a.m., followed by a formal Public Hearing from 1:30 p.m. to 4:30 p.m., in the Oklahoma/Texas Rooms on the 12th floor of the EPA office, 1445 Ross Avenue, Dallas, Texas 75202-2733.

*Thursday August 13, 1998:* Informal Public Meeting with question and answer session from 3:00 p.m. to 5:00

p.m., followed by a formal Public Hearing from 7:00 p.m. to 10:00 p.m., in the Cherokee Room of the Clarion Hotel and Conference Center, 4345 N. Lincoln Blvd., Oklahoma City, OK 73105.

*Thursday August 20, 1998:* Informal Public Meeting with question and answer session from 3:00 p.m. to 5:00 p.m., followed by a formal Public Hearing from 7:00 p.m. to 10:00 p.m., in the Corbett Center Auditorium, Corbett Center Student Union, New Mexico State University Campus, South Jordan Street, P.O. Box 30004, Las Cruces, New Mexico 88003.

Information in this Notice is organized as follows:

- I. General Statutory and Regulatory Background
- II. Permit Coverage
- III. Permit Conditions
- IV. Best Management Practices
- V. Discharge Monitoring and Reporting Requirements
- VI. Pollution Prevention Plan Requirements
- VII. Other Permit Requirements
- VIII. Economic Impact
- IX. Compliance With Other Federal Regulations

### **I. General Statutory and Regulatory Background**

Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. 1311(a), prohibits the discharge of pollutants to waters of the United States in the absence of authorizing permits, including NPDES permits. CWA 402, 33 USC 1342, authorizes EPA (or EPA-approved states) to issue NPDES permits allowing such discharges on condition they will comply with requirements implementing CWA sections 301, 304, and 401 (33 U.S.C. 1311, 1314 and 1341). Among those requirements are effluent limitations reflecting levels of technological capability, water quality standards, and other more stringent requirements states may adopt under CWA 510, 33 U.S.C. 1370. Violation of a condition contained in an NPDES permit, whether an individual or general permit, is 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.

Most NPDES permits EPA issues are individual permits; i.e., they apply only to one facility and authorize discharges of pollutants only from that facility. EPA may also use "general permits" to regulate numerous facilities which have similar discharges and are subject to the same conditions and limitations within a geographic area. See 40 CFR 122.28; *NRDC v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977). Using general permits conserves EPA resources and reduces the paperwork burden associated with obtaining discharge authorization for

the regulated community. In issuing general permits, EPA does not use the procedural rules (40 CFR Part 124) it uses in individual permitting actions; instead, it uses procedures that are more commonly associated with rulemaking, i.e., publication in the **Federal Register**. General permits are not rules, however, and are subject to the same substantive requirements that apply to individual NPDES permits, many of which are found in 40 CFR Part 122. The draft CAFO general permits proposed here are general permits.

To control discharges of "conventional pollutants", such as pH, biochemical oxygen demand (BOD), oil and grease, total suspended solids (TSS) and fecal coliform, CWA 301(b)(1)(E) requires that NPDES permits include effluent limitations based on "best conventional pollutant control technology" (BCT). To regulate nonconventional and toxic pollutants, CWA section 301(b)(2)(A), (C), and (D) require that NPDES permits include effluent limitations based on "best available technology economically achievable" (BAT), a standard which generally represents the best performing existing technology in an industrial category or sub-category. BAT and BCT effluent limitations may never be less stringent than corresponding effluent limitations based on "best practicable control technology currently available" (BPT), a standard generally applicable to similar discharges prior to March 31, 1989, under CWA 301(b)(1)(A).

Frequently, EPA adopts nationally applicable "effluent limitations guidelines" identifying the BCT and BAT standards to which specific industrial categories and subcategories are subject. Until such guidelines are published, however, CWA section 402(a)(1) requires that EPA establish appropriate BCT and BAT effluent limitations in its NPDES permitting actions on the basis of its best professional judgment (BPJ). As further explained below, the permits proposed here include some effluent limitations based on effluent limitation guidelines codified at 40 CFR Part 412 and some limitations based on BPJ.

Pursuant to CWA 301(b)(1)(C), NPDES permits must include "water quality based" effluent limitations if BAT and BCT limitations which would otherwise be applied are not stringent enough to avoid discharges causing exceedances of applicable water quality standards adopted by states, Indian Tribes, and sometimes EPA. EPA is proposing additional requirements for CAFOs located in watersheds that have been impaired by CAFO-related activities to prevent further releases of nutrients,

particularly phosphorus, from impacting these watersheds.

In addition to effluent limitations, NPDES permits frequently require that permittees implement "best management practices" (BMPs). NPDES permits may include BMPs to control toxic pollutants in accordance with CWA 304(e), when numeric effluent limitations are infeasible and/or when reasonably necessary to assure compliance with effluent limitations or standards or to carry out the purpose and intent of CWA. See 40 CFR 122.44(k). As explained below, the proposed CAFO general permits contain a number of BMPs.

*What are CAFOs?* CAFOs are facilities used to confine animals, including poultry, for meat, milk, or egg production, or stabling, in pens or houses, where the animals are fed or maintained at the place of confinement. See 40 CFR 412.11(b).

*What pollutants are associated with CAFOs.* The characteristics of waste 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]. The most commonly recognized contaminants from CAFOs include biochemical oxygen demand (BOD), total suspended solids (TSS), organics, bacteria, and plant nutrients (nitrogen and phosphorus compounds). EPA encourages the proper utilization of such plant nutrients for agricultural production of crops and forage, but their improper storage and use may cause significant harm to the quality of surface and ground waters. The effluent limitations and requirements for all CAFOs covered by these general permits are intended to avoid water quality problems.

### **II. Permit Coverage**

*Who needs to be covered by these permits?* As noted in Part I.B. of the draft permits, "a permit is required for discharges from operations classified as CAFOs." All facilities with more than 1000 animal units [or the number and types of animals specified in 40 CFR part 122, Appendix B(a)] are eligible for coverage under the terms of these permits.

*What constitutes a discharge?* A discharge of pollutants is any addition of any pollutant or combination of pollutants from a point source to waters of the United States. See CWA section 502(12); 40 CFR 122.2. This includes, but is not limited to, contaminated runoff from corrals, stock piled manure, or silage piles; overflow from storage

ponds; overflow from animal watering systems which are contaminated by manure; drainage of wastewater from land application areas; contaminated runoff from land application fields in which wastewater is applied at greater than the agronomic rate, runoff from fields on which manure has been applied by placement on or in the soil if such runoff results in a direct discharge of manure to waters of the U.S.; and discharge of wastewater from retention structures to surface water via a hydrologic connection. "Waters of the United States" is a very broad term (defined at 40 CFR 122.2) which includes almost all surface water bodies in the United States.

*In accordance with Part II.A of the draft permits, a CAFO may discharge waste or process wastewater only when rainfall events, either chronic or catastrophic, cause an overflow of process wastewater from a facility designed, constructed, and operated to hold all process wastewater plus the runoff from a 25-year, 24-hour rainfall event for the location of the CAFO. All other discharges are prohibited.*

*What are AFOs?* Not all animal feeding operations (AFOs) are CAFOs. Storm water discharges from other types of animal feeding operations are generally exempt from NPDES regulation as point sources by CWA section 502(14). Discharges from such facilities may nevertheless be regulated under state laws.

Parts I.B. and VII.I. of the draft permits define "CAFO" in accordance with 40 CFR 122.23 and 40 CFR part 122, Appendix B. For an operation to be a CAFO, the facility must first qualify as an animal feeding operation (AFO). A facility is an AFO if:

(1) Animals are kept onsite for a total of 45 days or more during any 12-month period, and (2) crops, vegetation forage growth, or post-harvest residues are not sustained on the facility during the normal growing season.

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. 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.

The second part of this definition distinguishes feedlots from pastures; pastures are not regulated as CAFOs. 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, but such marginal growth does not render them pastures. *Pastures are themselves not generally CAFOs, but wastewater overflows from pastures used as land application sites for CAFO waste are discharges and operation of such a site is subject to the requirements of these permits.*

*CAFO Criteria.* An AFO is a CAFO if: (1) It is used to confine more than the number of animal units listed at 40 CFR part 122, Appendix B(a) and Part VII.I(a) of the permit. For example, dairies with more than 700 mature dairy cows or feedlots with more than 1000 feeders are always CAFOs. These large CAFOs are "new sources" and must provide additional information for EPA to use in reviewing their operations for compliance with the National Environmental Policy Act of 1969 (NEPA) before obtaining coverage under these permits.

(2) It is used to confine the number of animal units listed in 40 CFR part 122, Appendix B(b) and Part VII.I(b) of the permit and it discharges through a manmade conveyance or discharges directly to surface waters. Conveyance of wastewater from the property to waters of the United States through a pipe, ditch, lateral, channel gully, etc., is a discharge through a manmade conveyance. Direct discharge occurs when a stream, creek, wetland or other water body runs through the facility where it may contact CAFO waste. If confined animals have direct access to such waters, a direct discharge is presumed. It should be noted that even intermittent conveyed or direct discharges render a facility in this category a CAFO. If an AFO has discharged in the past and/or may discharge in the future, it is a CAFO.

(3) It is designated a CAFO by the Regional Administrator of EPA Region 6 as a significant contributor of pollutants (SCP) in accordance with 40 CFR 122.23(c)(2). This allows case-by-case regulation of smaller, problem facilities which would not otherwise be considered CAFOs under the criteria described above. Such designations occur only after an onsite inspection and the facility must be notified before the designation is effective.

*What are "animal units?"* "Animal unit" is a term defined in 40 CFR Part 122, Appendix B and the number of animals constituting a unit 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. Conversion to animal units is also used in determining whether facilities with more than one animal type onsite are CAFOs. Animal units are incorporated in the CAFO criteria described above. Facilities with greater than 1000 animal units (large facilities) are CAFOs. Facilities with between 300 and 1000 animal units (medium-sized facilities) that discharge through a man-made conveyance or discharge directly into waters of the United States are also CAFOs.

*Is there an exception to CAFO status?* 40 CFR Part 122, Appendix B excludes AFOs which discharge *only* during a 25-year, 24-hour or greater storm event from CAFO status. Experience has shown that this exclusion has little practical effect, however. Even a facility properly designed to retain all the storm water generated by that statistical storm event plus all the waste accumulated at the facility may have to discharge as a result of less but longer duration storm events. It is also very difficult to show that a 25-year, 24-hour storm event has actually occurred at most AFOs. Unless it is authorized to discharge by an NPDES permit, even a properly designed and operated facility may thus be subject to enforcement action under CWA. *See Carr v. Alta Verde Industries*, 931 F.3d 1055 (5th Cir. 1991).

*How do CAFOs obtain coverage under these general permits?* Facility operators must submit a "Notice of Intent (NOI) to be covered" to obtain discharge authorization under these general permits to EPA Region 6 and to any State/Tribal agency with regulatory jurisdiction over the CAFO. *See* 40 CFR 122.28(b)(i). NOI submission requirements are outlined in Part I.E. of the permits.

*Who is eligible for coverage?* Facilities with 1,000 animal units or the number and types of animals specified in 40 CFR part 122, Appendix B(a) are eligible for coverage under these draft permits. Specific coverage requirements for existing, new, and expanding CAFOs are specified in Part I.C (1), (2), and (3) of the proposed general permits. Offsite operators wanting to dispose of manure at rates that exceed phosphorus agronomic needs of crops in impaired watersheds must apply for separate permit coverage in accordance with Part I.C (4) of the watershed-specific draft permits.

*Are there limitations on obtaining permit coverage?* In accordance with 40 CFR 122.28, EPA may determine that

providing coverage under a general permit is inappropriate for a particular CAFO and EPA may require such a facility to apply for an individual NPDES permit. Such an individual permit might be required, for example, to assure that applicable water quality standards are protected by imposing additional conditions on authorized discharges. Part I.F of the draft permits lists circumstances in which an individual permit (instead of a general permit) may be appropriate.

EPA conducts a NEPA review of all new CAFOs with more than 1000 AUs before providing them coverage under the CAFO NPDES general permit. The operator of such a proposed facility must submit an environmental information document to EPA with its NOI. EPA will then conduct a NEPA review to determine whether to provide permit coverage for the proposed facility. EPA's decision will be subject to public participation and documentation. Permittees must obtain documentation of the Agency's final NEPA decision (e.g., a record of decision or finding of no significant

impact) before operating the CAFO and must maintain that documentation onsite.

New CAFOs that will be located within one mile of the Texas Coastal Zone Management Area are not eligible for coverage under the proposed permits. Such CAFOs must apply for individual permits.

*When will these permits expire?* Since the terms of all NPDES permits are limited to five years, pursuant to CWA section 402(b)(1)(B) and 40 CFR 122.46(a), these permits will expire five years after they are issued. If the permits are not reissued before they expire, however, discharge authorization for CAFOs which obtained coverage before the expiration date will continue until the agency makes final decision on reissuance.

**III. Permit Conditions**

Today, EPA is proposing to reissue general permits originally issued on February 3, 1993 (see 58 FR 7610). Most of the effluent limitations and conditions of the reissued draft permits are the same ones contained in those original permits and are based on the

same factors considered and described in the 1993 final publication. Though these "carryover" conditions of the draft permits are nevertheless subject to reconsideration in this action, EPA may impose less stringent conditions only for reasons listed at CWA section 402(o) and 40 CFR 122.44(l). Some new record-keeping requirements have been added to the draft permits to better assure compliance with the effluent limitations and BMPs of the permits.

EPA is also proposing to issue watershed-specific general permits for all CAFOs located in watersheds that have been impaired by CAFO-related activities. The watershed-specific general permits include requirements that are designed to protect the impaired watersheds against further degradation resulting from manure and wastewater land application fields.

The following water bodies and associated watersheds have been impaired by CAFO-related activities and have been reported to EPA by the States of Oklahoma and Texas in accordance with Section 303(d) of the Clean Water Act:

State	Segment no.	Segment name
Texas .....	1255 .....	Upper North Bosque River.
Oklahoma .....	OK120400010060 .....	Arkansas River.
	OK220200020010 .....	Arkansas River.
	OK120400010010 .....	Arkansas River.
	OK621010010160 .....	Arkansas River, Salt Fork.
	OK121700020310 .....	Baron Fork.
	OK121700050010 .....	Baron Fork.
	OK121700050170 .....	Baron Fork.
	OK121700060040 .....	Battle Creek.
	OK311210000010 .....	Beaver Creek.
	OK410600010010 .....	Blue Ridge.
	OK410600020010 .....	Blue Ridge.
	OK220100030010 .....	Brazil Creek.
	OK520600010010 .....	Canadian River.
	OK121600030360 .....	Carey Bay, Grand Lake.
	OK121600030340 .....	Cave Springs Branch.
	OK121600030220 .....	Chigger Cove, Grand Lake.
	OK620920020010 .....	Cimmaron River.
	OK120410010100 .....	Cloud Creek.
	OK310830060010 .....	Cobb Creek.
	OK121600030260 .....	Court House Hollow Cove, Grand Lake.
	OK520620010080 .....	Deer Creek.
	OK520620060010 .....	Deer Creek.
	OK121600030300 .....	Dillar Cove.
	OK121600030080 .....	Duck Creek Cove, Grand Lake.
	OK620920040010 .....	Eagle Chief Creek.
	OK121600030350 .....	Echo Bay, Grand Lake.
	OK121600050070 .....	Eucha Lake.
	OK121600070110 .....	Fivemile Creek.
	OK121700060010 .....	Flint Creek.
	OK220100040010 .....	Fourche Maline Creek.
	OK410210080010 .....	Glover Creek.
	OK621010010020 .....	Great Salt Plains Lake.
	OK121600030170 .....	Horse Creek Cove.
	OK121700030010 .....	Illinois River.
	OK121700030080 .....	Illinois River.
	OK121700030280 .....	Illinois River.
	OK121700030350 .....	Illinois River.
	OK310820010160 .....	Ionine Creek.
	OK310820010200 .....	Ionine Creek East.

State	Segment no.	Segment name
	OK310820010210 .....	Ionine Creek West.
	OK410310010020 .....	Jackfork Creek.
	OK410300010010 .....	Kiamichi River.
	OK410300020010 .....	Kiamichi River.
	OK310830060040 .....	Lake Creek.
	OK121600030020 .....	Lake O' of the Cherokees (Grand).
	OK121600030060 .....	Lake O' of the Cherokees (Grand).
	OK121600030290 .....	Lake O' of the Cherokees, Honey Creek.
	OK121600030150 .....	Lake O' of the Cherokees, Lower Middle.
	OK121600030280 .....	Lake O' of the Cherokees, Middle.
	OK311210000050 .....	Little Beaver Creek.
	OK121600070120 .....	Little Fivemile Creek.
	OK410210020010 .....	Little River.
	OK410400050010 .....	Muddy Boggy Creek.
	OK121600030010 .....	Neosho (Grand) River.
	OK121600030050 .....	Neosho (Grand) River.
	OK121600030140 .....	Neosho (Grand) River.
	OK121600030270 .....	Neosho (Grand) River.
	OK620910040260 .....	Northwood Lake.
	OK121700050120 .....	Peacheater Creek.
	OK220100020010 .....	Poteau River.
	OK121600050150 .....	Spavinaw Creek.
	OK620900040010 .....	Stillwater Creel.
	OK310800010050 .....	Texoma Lake, Washita.
	OK620910020030 .....	Turkey Creek.
	OK620910060010 .....	Turkey Creek.
	OK310800020010 .....	Washita River.
	OK310820010010 .....	Washita River.
	OK310830010010 .....	Washita River.
	OK310830020010 .....	Washita River.
	OK310830030010 .....	Washita River.

EPA is requesting comments from the public on whether the watershed-specific general permits should be applicable to all nutrient-impaired watersheds irrespective of the source of the nutrients.

**Effluent limitations.** Part II.A of the draft permits prohibits discharges of CAFO wastewater except as a result of catastrophic or chronic rainfall events. This "no discharge" effluent limitation is based on the effluent limitations guidelines for the feedlot category promulgated at 39 FR 5704 (February 14, 1994) and codified at 40 CFR Part 412. CWA § 402(a)(1)(A) requires that EPA include this limitation in NPDES permits for CAFOs with more than 1,000 animal units. In the 1993 permit proceedings, EPA Region 6 found it appropriate to apply the same effluent limitations to smaller CAFOs on the basis of BPJ exercised under CWA Section 402(a)(1)(B).

Under the "no discharge" effluent limitation, permitted CAFOs may discharge only during catastrophic or chronic rainfall conditions. A catastrophic event is generally equivalent to a 25-year, 24-hour storm event, but may also include tornadoes, hurricanes, or other catastrophic conditions that would cause an overflow from a properly designed and operated waste retention structure. Chronic rainfall is a series of wet

weather conditions that preclude dewatering of properly maintained retention structures.

In most cases, the technology to achieve the "no discharge" limit is containment of all contaminated liquid runoff resulting from rainfall and subsequent application of these liquids, along with the generated solid wastes, to productive crop land at agronomic rate, i.e., a rate which will provide adequate moisture and nutrients that can be utilized by the crops. To implement this technology requires a wastewater retention structure, such as a lagoon, and provisions for land application of the wastes to cropland, such as sprinklers.

Part II.B(1) of the draft permits prohibits the discharge of process wastewater from retention structures to waters of the United States by means of a hydrologic connection through ground water. This prohibition is required to assure compliance with the "no discharge" effluent limitation and the purposes of CWA. Different federal courts have reached different conclusions on whether EPA may regulate such discharges, but the EPA Region 6 position is reflected by such cases as *Quivera Mining Co. v. USEPA*, 765 F. 2d 126(10th Cir. 1985); *McClellan Ecological Seepage v. Weinberger*, 707 F. Supp. 1182, 1194 (E.D. Cal. 1988); *Sierra Club v. Colorado Refining Co.*,

Civ. No. CIV.A.93-K-1713 (D. Col. Dec. 8, 1993). Although this prohibition on discharging through a groundwater connection is included in the broader "no discharge" limitation at Part II.A of the draft permits, Region 6 also includes it separately at Part II.B(1) to make its intentions clear in this area.

The control of discharges through hydrologic connection is best handled in the design phase of the control facility. The draft NPDES general permits require the use of procedures recommended by the Natural Resource Conservation Service of the U.S. Department of Agriculture (USDA-NRCS) when designing control facilities. Installation of liners is required as a part of facility construction.

Part II.B(2) of the draft permits prohibits the discharge of contaminated runoff or drainage of land applied wastewater from land application areas to waters of the United States. Wastewater must not be applied at such a rate or under conditions that it runs off from the application fields to waters of the U.S. Wastewater may not, for example, be applied when the soil is saturated or frozen. Where process-generated wastewater is used for irrigation of crops, application rates shall not exceed the nutrient uptake of the crops being produced on the land application areas.

Part II.B(3) of the draft permits prohibits the discharge of contaminated runoff from land application areas where manure has been placed on the soil surface, if such runoff will result in a direct discharge of pollutants to waters of the United States. Manure should be incorporated into the soil to minimize runoff, and edge-of-field grass strips should be used to separate water courses from runoff. Timing and rate of application must be in response to crop needs, weather conditions, and soil conditions. Manure will not be applied to land when the ground is frozen or saturated or during rainfall.

Part II.B(4) of the watershed-specific draft permits prohibits the direct discharge of contaminated runoff from offsite land disposal areas where manure is land applied at rates that exceed phosphorus agronomic rates. Operators of facilities that intend to land apply CAFO-generated manure or wastewater offsite at non-agronomic rates must submit a separate NOI for coverage under these permits.

#### IV. Best Management Practices

Part II.D of the draft permits requires that all permittees develop and implement site-specific BMPs specifically designed to assure compliance with the permits' "no discharge" limitations. There are two types of BMPs that must be implemented by all CAFOs: those BMPs for management and control of wastes and wastewaters generated at the animal confinement and maintenance areas of the CAFO, and BMPs for properly disposing of waste/wastewater by land application at rates based on agronomic needs of crops. The BMP requirements for the confinement and maintenance areas and land application areas are described below.

##### 1. BMPs for Animal Confinement and Maintenance Areas

Part II.D(1) of the draft permits includes a description of BMPs for (1) minimizing wastewater volumes generated from animal confinement and maintenance areas, (2) management of precipitation runoff from animal confinement and maintenance areas, and (3) ensuring that control structures for wastewater containment are adequately designed, constructed, operated, and maintained. The following are the BMPs that must be implemented at the animal confinement and maintenance areas: (1) all control structures must be designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event for the

particular location of the CAFO; calculations must include allowances for surface retention, infiltration, and other site-specific factors; (2) wastewater control and retention structures or holding pens for new CAFOs may not be located in the 100-year flood plain; wastewater control and retention structures or holding pens for existing CAFOs that are located within the 100-year flood plain must be protected by berms to prevent inundation and damage that may occur during that flood event; (3) CAFOs must not expand their operations prior to expanding their retention control structures or holding pens; (4) no waters of the U.S. shall come into direct contact with animals confined on the CAFO; open lots must be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures designed to carry peak flows expected at times when the 25-year, 24-hour rainfall event occurs; (5) CAFO-related activities must not cause water quality impairment to public or private drinking water wells; waste handling, treatment, and management shall not create an environmental or a public health hazard and shall conform with State/Tribal guidelines and/or regulations for the protection of surface water quality; (6) potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent pollutants from entering the waters of the U.S.; (7) all discharges to containment structures shall be composed entirely of wastewaters from the proper operation of a CAFO and the precipitation runoff from the CAFO areas; (8) dead animals must be disposed of in a manner to prevent contamination of waters of the U.S. or create a public health hazard; and (9) appropriate measures necessary to prevent spills and to clean up spills of any toxic pollutants shall be taken; any spills that may occur must be reported to EPA and State/Tribal agencies as specified in Parts III.A and IV.D of the draft permits.

##### 2. BMPs for Onsite Land Application of Waste/Wastewater

###### (a) Introduction

Numerous studies have shown that continued land application of manure at rates based on nitrogen agronomic rates results in a build up of soil phosphorus levels (Sharpley, et al. 1994). A recent publication by the USDA-NRCS and EPA (Lander et. al., 1998) indicates that AFOs produce more manure nutrients (nitrogen and phosphorus) than can be utilized by crops in many parts of the U.S., suggesting that there is a potential

for nutrients, particularly phosphorus, to accumulate in soils and eventually impact the surrounding water bodies. Information submitted to EPA Region 6, in accordance with Section 303(d) of the CWA and recent studies conducted by the Texas Institute for Applied Environmental Research (TIAER) indicate that many watersheds in Region 6 have been impaired by CAFO-related activities. For example, the surface water monitoring study conducted by TIAER (1997) showed a strong correlation between the concentration of phosphorus in the upper North Bosque River and the acreage of land application fields in the watershed, upstream of the surface water monitoring stations. Based on these data, the TIAER report concluded that the upper North Bosque River watershed in Erath County, Texas, has been impaired by land application activities.

EPA's objective, as specified in a recent draft of the EPA Strategy for AFOs which was released in March 1998, is to include adequate controls in NPDES permits to reduce the quantities of nutrients entering water bodies. Several EPA Region 6 States, including Texas and Oklahoma, have already established soil phosphorus concentration limits in their State permits for CAFOs as a means of controlling nutrient pollution. Texas, for example, has established a critical soil phosphorus concentration of 200 mg/kg above which manure must be applied based on phosphorus agronomic rates. Research has demonstrated that a concentration of about 200 mg/kg phosphorus in the surface soil is the critical level above which the concentration of phosphorus in the runoff becomes environmentally significant. Sharpley and others (1996) demonstrated that a soil phosphorus concentration of 200 mg/kg (as determined by the Mehlich 3 Method) resulted in a phosphorus concentration of 1,000 micrograms per liter in the runoff. According to Wood (1998), the proposed allowable dissolved phosphorus limit for agricultural runoff is 1000 micrograms per liter.

Another approach for determining when to switch from the nitrogen-based manure application rate to a phosphorus-based rate is to determine the percentage of phosphorus saturation in the land application area soil. Dutch scientists have demonstrated that a soil phosphorus saturation of 25% is the critical level above which the phosphorus concentration in the soil is considered to be environmentally unacceptable, because at this concentration, the concentration of

phosphorus in the runoff increases and may exceed 1,000 micrograms per liter. The phosphorus saturation index provides an indication of how much of the phosphorus sorption capacity of a particular land application area soil has been used up.

Hence, the phosphorus saturation measurement provides information on both the potential of a soil to enrich runoff with dissolved phosphorus (high degree of phosphorus saturation) and also helps to predict how much of the phosphorus added to the land application area soil as manure may be retained by the soil in a form that is relatively resistant to be released into the runoff (low degree of phosphorus saturation). However, the procedures for determining the soil phosphorus saturation percentage have not been widely tested in the United States.

The USDA-NRCS is currently developing a procedure for identifying environmentally sensitive land application fields that could promote phosphorus enrichment in water bodies when manure or wastewater is applied to such fields (Lemunyon and Gilbert, 1993). The USDA-NRCS procedure uses site-specific characteristics of the land application site, including (1) potential soil erosion rates, potential runoff, soil phosphorus concentration, and (2) manure management practices (i.e., application rates and application methods) to assess the capacity of the land application site to adsorb the phosphorus and prevent it from impacting any surrounding water bodies. However, before the USDA-NRCS completes its research, EPA Region 6 is proposing, as specified in Part II.D(2)(d) of the watershed-specific general permits, that rates of manure application in impaired watersheds be based on phosphorus agronomic requirements of crops. Also, EPA Region 6 is proposing to regulate offsite disposal of manure by land application at rates that exceed phosphorus needs of crops as specified in Part II.D(4) of the watershed-specific general permits.

#### (b) Waste Management Plan

Part II.D(2) of the draft permits requires all CAFOs that dispose of wastes by land application to develop and implement a waste management plan as specified in Part II.D(2). All wastes, including Solids, sludges, manure, and other pollutants generated at the facility shall be managed and disposed of in accordance with procedures specified in such a site-specific waste management plan. Each waste management plan shall describe the methods for, and account for, the disposal of all manure and wastewater

generated by the facility. If the proposed methods of disposal include onsite or offsite land application of manure and wastewater, the facility must develop a site-specific nutrient utilization plan as described in Part II.D(2)(b).

#### (c) Nutrient Utilization Plan

If the waste management plan developed by the CAFO provides for land application of the manure and wastewater generated at the facility, the permittee must develop and implement a nutrient utilization plan to minimize release of nutrients into waters of the U.S. Such a plan must include the following information: (1) a site map showing the proposed land application areas, including the major soil types within the proposed land application areas; (2) crop rotations to be implemented during the permit term; (3) methods and procedures for analyzing nutrients in the land application area soils, manure, and wastewater; (4) predicted yield goals for the particular crops that will be grown; (5) procedures for calculating nutrient budgets that must be used to determine waste application rates based on phosphorus crop needs; equipment to be used during land application of manure and wastewater and the procedures for inspecting and maintaining such equipment; (6) projected rates and timing of application of the manure and wastewater as well as other sources of nutrients that may be applied to the land application areas to supplement the manure.

The permittee must maintain records of the actual rates and dates of application of the manure, wastewater, or other nutrients applied to the land application areas throughout the entire permit term. If the manure and wastewater are to be sold or given away or disposed of in areas that are not described in the facility's nutrient utilization plan, the facility must keep records of landowner agreements for the lands that will receive the manure and wastewater, and the nutrient contents of the manure and wastewater applied to such lands.

The nutrient utilization plan must include (1) specific details for nutrient sampling and testing of the land application soils, manure, and wastewater [Part II.D(2)(c)], and (2) the basis and procedures for determining agronomic rates of manure and wastewater application rates [Part II.D(2)(b)].

Existing CAFOs must develop and implement a nutrient utilization plan within one year following reissuance of the CAFO general permit. New CAFOs must develop and implement a nutrient

utilization plan immediately following reissuance of the CAFO general permit. Designated CAFOs must develop and implement a nutrient utilization plan within two years following designation.

#### (d) Nutrient Sampling and Testing

Each permittee must conduct analytical tests to determine the nutrient contents of the (1) manure and wastewater generated by the facility, and (2) soils within the land application areas prior to the first land application event at new CAFOs and the first seasonal land application event at existing facilities, then once per quarter thereafter. Frequencies can be increased when significant variations in nutrient levels are experienced at a facility between sampling events, or if there are identified or suspected water quality standards violations. The permittee must then compare the nutrient contents of the manure and wastewater with the nutrient contents of the land application area soils to determine the needed fertility and application rates for pasture production or production of other targeted crop yields. The permittee must maintain records of all nutrient sampling and analyses data, calculations, application rates and utilized acreage of the land application area.

#### (e) Basis for Determining Agronomic Rates Outside of Impaired Watersheds

According to Part II.D(2)(d) of the draft CAFO general permits, manure and wastewater application rates must be based on agronomic crop requirements for nitrogen or phosphorus, as determined from results of nutrient sampling and testing. Application rates should be based on nitrogen until the concentration of phosphorus in the soil increases to the critical (threshold) level established by the State/Tribe in which the CAFO is located or by the USDA-NRCS. Once the phosphorus threshold is reached, the application rate must be based on phosphorus requirements of the crop. The threshold phosphorus holding capacity of the soil is the maximum concentration of phosphorus in the soil that will not create an unacceptable risk of water quality impairment. The CAFO operator must use the approach outlined below for determining agronomic rates of waste/wastewater application:

(i) Apply manure and wastewater at rates based on the agronomic crop needs of nitrogen if soil tests demonstrate that the concentration of phosphorus in the surface soil (0 to 6 inch-depth) is or will be consistently below the threshold level established by the State/Tribe during the permit term. The threshold



soil phosphorus level for Texas is 200 mg/kg, as determined by using procedures developed by Texas A&M University. If there is no threshold soil phosphorus concentration limit established by the State/Tribe or the USDA-NRCS, then continue to apply manure/wastewater at rates based on nitrogen requirements of crops.

(ii) Apply manure and wastewater at rates based on the agronomic crop needs of phosphorus if soil tests demonstrate that the concentration of phosphorus in the surface soil exceeds the threshold level recommended by the State/Tribe where the CAFO is located.

(iii) If soil tests indicate that the soil phosphorus concentration will exceed the threshold phosphorus level during the permit term, the permittee should begin to seek access to additional cropland or make other adjustments that are necessary to comply with the phosphorus limit established by the State/Tribe in which the CAFO is located.

#### (f) Basis for Determining Agronomic Rates in Impaired Watersheds

As specified in Part II.D(2)(d) of the watershed-specific general permits, manure and wastewater must be land applied at rates based on phosphorus agronomic requirements of crops to minimize risks of further water quality impairments due to phosphorus. The CAFO operator must develop and implement a phosphorus nutrient budgeting system to monitor and balance the quantities of manure phosphorus added to the soil and those removed in the harvestable portions of the crops produced on the land application areas during the growing season. The quantities of the phosphorus added to the land application area as manure should be approximately equal to the quantities of phosphorus removed in the harvestable portions of the crops if the CAFO operator is applying the manure at phosphorus agronomic requirements of the crops being produced on the land application areas.

### 3. Offsite Land Application

According to Part II.D(3) of both the reissued draft permits and the proposed watershed-specific draft general permits, offsite land application of manure at agronomic rates is not regulated. However, whenever CAFO-generated manure is to be sold or given away for offsite disposal by land application at agronomic rates, the CAFO operator must provide current and accurate manure testing data that can be used by the offsite applicator to establish agronomic rates of manure

application. The CAFO operator must provide information to the offsite applicator concerning the voluntary measures and procedures for applying the manure based on agronomic rates. The CAFO operator should obtain, from the offsite applicator, information concerning the location and acreage of the proposed offsite land application areas. The CAFO operator must keep all records, including the information provided by the offsite applicator, the dates, and the quantities of the manure sold or given away. These records must be kept at the facility. The CAFO operator must provide this information to the Director whenever requested.

### 4. Offsite Disposal of Waste/Wastewater at Non-Agronomic Rates

When CAFO-generated manure or wastewater is land applied offsite at non-agronomic rates, i.e., rates that exceed phosphorus agronomic requirements of crops, pollutants are likely to be discharged to waters of the United States as precipitation runoff. CAFO operators and third-party operators of privately owned treatment works that land apply CAFO-generated manure or wastewater offsite at non-agronomic rates are, therefore, required to obtain permit coverage as specified in Part I.C.(4) of the general permits for CAFOs in impaired watersheds, unless they certify that the manure/wastewater will be applied at rates based on phosphorus agronomic requirements of crops and that the agronomic rates will be calculated by using a nutrient budgeting system.

### 5. Pollution Prevention Plan (PPP)

A site-specific PPP that includes a manure management plan, and a nutrient utilization plan must be developed by each CAFO. Each PPP must describe measures and practices to assure compliance with the limitations and conditions of this permit. Large CAFOs with more than 1000 animal units must have, on site, and must implement a PPP immediately following the effective date of the proposed general permits. Medium-size CAFOs with less than 1000 animal units shall have, on site, and must implement a PPP immediately following the effective date of the general permits. Small CAFOs (with less than 300 animal units) that have been designated by EPA as CAFOs shall have, on site, and must implement a PPP within one year following designation.

## V. Discharge Monitoring and Reporting Requirements

Monitoring and discharge requirements are included in Part III of

the draft permits. Monitoring data serve a number of functions under the NPDES program. Discharge monitoring data can be used to assist in the evaluation of the risk of the discharge by indicating the types and the concentrations of pollutant parameters in the discharge. Discharge monitoring data can be used in evaluating the potential of the discharge to cause or contribute to water quality impacts and water quality standards violations.

Discharge monitoring data can also be used to evaluate the effectiveness of controls on reducing pollutants in discharges. This function of monitoring can be important in evaluating the effectiveness of source control or pollution prevention measures as well as evaluating the operation of end-of-pipe treatment units. Where numeric or toxicity effluent limits are incorporated into permits, discharge monitoring data play a critical role by providing EPA and authorized NPDES States with data to evaluate compliance with effluent limits. The use of discharge monitoring data to determine permit compliance greatly enhances the ability of EPA and authorized NPDES States to enforce permit conditions.

Permits for industrial process discharges and discharges from POTWs traditionally have incorporated numeric and/or toxicity effluent limitations as permit conditions. Monitoring reports for these discharges provide a direct indication of whether the discharge complies with permit conditions. However, the proposed general permits for CAFOs will require no discharge of pollutants into waters of the U.S. Therefore, monitoring data will be required only in case of a discharge from the retention system.

### 1. Discharge Notification

If there is a discharge, Part II.A of the draft permits requires the permittee to notify the Director and the State/Tribe within 24 hours of the discharge from the retention facility, and to provide a written notification to the Director and the State/Tribe within 14 working days of the discharge. The standard notification requirements are specified in 40 CFR 122.44(i), 122.41(l)(4), and 122.41(l)(6). A copy of the notification must be kept together with the PPP. The discharge notification report should include the following:

#### (a) Description of the Discharge

A description and cause of the discharge, including an estimate of the discharge volume; the period of discharge, including exact dates and times, and, if not corrected, the anticipated time the discharge is



expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the discharge; and if caused by a precipitation event, information from the facility and the nearest National Weather Service station concerning the size and duration of the precipitation event.

(b) Analysis of the Discharge

The discharge must be analyzed for all conventional pollutants associated with feedlot operation, including pH, biochemical oxygen demand (BOD), total suspended solids (TSS), oil and grease, and fecal coliform as well as nonconventional pollutants, including nutrients such as phosphorus and nitrogen. High numbers of Fecal Coliform bacteria are an indicator of the amount of pathogenic bacteria that are being discharged to the receiving water. TSS is a common pollutant found in discharges that can have significant impacts on receiving waters. The biochemical oxygen demand measurement will help the permitting authority evaluate the oxygen depletion potential of the discharge. Five day Biochemical Oxygen Demand (BOD5) is the most commonly used indicator of oxygen demand. The pH will provide important information on the potential availability of metals to the receiving flora, fauna, and sediment. In some cases it will provide information regarding material management. In addition to conventional pollutants, nutrients, such as total phosphorus, total Kjeldahl nitrogen (TKN), and nitrate plus nitrite nitrogen must be measured because nutrients can significantly impact water quality. Measurements taken for the purpose of monitoring shall be representative of the monitored discharge. Discharge monitoring and reporting requirements also include the need to monitor for any pollutants the facility uses or stores on site which have a potential to be in the discharge; for example, frequently used cleaning agents and pesticides.

2. Discharge Reporting Requirements

All discharge information and data shall be made available to the Director upon request as specified in Part III.B of the draft permits. Signed copies of monitoring reports shall be submitted to EPA and the State/Tribe, if requested. Signatory requirements are specified in Part III.H of the draft permits. Penalties for falsification of data are specified in Part III.C of the draft permits. The permittee shall retain copies of all records of discharge monitoring for at least three years from the date reported as specified in Part III.D of the draft permit.

The permittee must also notify EPA and the State/Tribe within 30 days of a change in facility ownership or operational control. The permittee must give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. The permittee must also report all instances of noncompliance within 24 hours to the Director and State/Tribe in accordance with the notification requirements of these draft permits. The draft general permits have an "adverse climatic conditions" provision in Part III.A(b) allowing a discharger to submit a description of why samples could not be collected (in lieu of sampling data) when the discharger is unable to collect samples due to climatic conditions which prohibit the collection of samples, including weather conditions that create dangerous conditions for personnel, such as flooding, high winds, hurricane, tornadoes, and electrical storms.

The requirements for the type of samples taken vary, depending on the nature of the retention structure. A minimum of one grab sample must be taken to characterize discharges from overflow structures, such as ponds or other impoundments.

CAFOs are not required to submit discharge monitoring reports unless specifically requested by the Director. However, these facilities must maintain records of sampling data collected during the term of the permit as specified in Part III.D of the draft permits. The permittee is required to retain records of all monitoring information, copies of all reports required by these permits, and records of all data for a period of at least three years from the date of the measurement, report, or application. This period may be extended by the Director.

**VI. Pollution Prevention Plan Requirements**

Part VI of the draft permits includes requirements for pollution prevention plans (PPPs). Each CAFO covered by the draft general permits must prepare, retain, and implement a PPP developed to allow the implementation of site-specific measures for controlling pollutants associated with CAFOs. At a minimum, the following requirements should be addressed in the PPP to reduce pollutants in runoff from the facility: (1) Identification of potential pollutant sources, (2) waste management controls, (3) employee training, (4) inspection and recordkeeping, (5) preventive maintenance, (6) discharge reporting and notification procedures, (7)

housekeeping procedures, (8) sedimentation and erosion prevention measures, and (9) spill response procedures. The key elements of the PPP are described below:

(a) Identification of Pollutant Sources

PPPs must be based on an accurate understanding of the pollution potential of the site. The first part of the plan requires an evaluation of the potential sources of pollution at the site. The permittee must identify all activities and significant materials which may potentially be significant pollutant sources. The PPP must include a site or topographic map showing the drainage pattern at the facility; arrows indicating the direction of surface water flow from the facility; each existing structure to control precipitation runoff; and surface water bodies which could receive the runoff.

(b) Wastewater Retention Facilities

The permittee shall keep documentation at the facility supporting the adequacy of waste management control structures used to contain wastewaters and storm waters from the animal confinement and maintenance areas. The documentation must include all calculations used to support design, construction, and the size of retention structures, as well as all factors and calculations used in determining land application rates, acreage, and crops. This documentation may be developed by the NRCS or a professional consultant. This information will allow the EPA to determine if the containment structure is adequately designed to contain the required 25-year, 24-hour storm event and whether waste is being land applied at agronomic rates. CAFOs located in impaired watersheds must provide additional waste/wastewater retention capacity to protect water quality. All CAFOs in impaired watersheds must redesign their retention structures to include a top freeboard of three feet and in no case the top freeboard must not be less than two feet.

(c) Liner Requirement

In general, surface water flow in most of EPA Region 6 States is sustained throughout much of the year by ground water inflow. As a result, contaminants from containment structures may leak into the ground water and eventually move toward local streams and rivers. Therefore, the permittee must maintain, on site, documentation indicating that no hydrologic connection exists between the contained wastewater and surface waters of the United States. The permittee is given two options to

demonstrate the lack of hydrologic connection: (1) Document that there can be no significant leakage from the retention structure; or (2) document that leakage from the retention structure would not migrate to surface waters. These two options allow the permittee to take into account the natural situation beneath the retention structure (such as natural materials or isolated ground waters). Man made connections from ground waters to surface waters via wells and irrigation must be taken into account when determining hydraulic connections. If the permittee cannot document the absence of a hydrologic connection, the containment structure must have a liner (constructed of either man-made or natural materials or a combination of the two) which will prevent the potential contamination of surface waters. Liners for retention structures should be constructed in accordance with good engineering practices and must be certified by a certified professional scientist with knowledge and experience in hydrogeology. Liner maintenance shall include inspection at least once every two years. Liner design may be in accordance with a NRCS plan.

Although the requirement in these draft permits for liner installation is to protect surface waters, the permittee is strongly encouraged to provide a liner for any containment structures to comply with existing Federal, State or Tribal regulations for ground water protection.

#### (d) Manure and Pond Solids Handling and Land Application

Requirements of the draft permits and the PPP do not allow the storage of wastes where there is the potential for inadvertent release to any surface water. Storage areas cannot be placed so as to be threatened by flood waters. Wastes cannot be applied to land during or immediately preceding rain events to avoid contaminated runoff. Land application rates and procedures that are developed for the facility in accordance with State/Tribe guidelines, may be made part of the PPP. The PPP must include documentation indicating that the procedures for the handling and disposal of wastewater, manure and pond solids comply with permit requirements. Documentation of waste storage protocol, land application procedures, and manure handling activities is a requirement of the draft general permits to ensure that pollutants are not discharged to waters of the United States. Permittees may use the wastewater or manure as fertilizer. However, the permittee must limit the application rate to the crop uptake rate

of (1) phosphorus in watersheds that have been impaired by CAFO-related activities, and (2) nitrogen or phosphorus in non-impaired watersheds, depending on whether the soil phosphorus concentration is below or above the phosphorus threshold level for that State/Tribe.

#### (e) Preventive Maintenance

A preventive maintenance program involves inspection and maintenance of all management devices as well as inspecting and testing equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters. A good preventive maintenance program includes identifying equipment or retention systems used; periodically inspecting or testing equipment and retention systems; adjusting, repairing, or replacing items; and maintaining complete records on the equipment and retention systems.

#### (f) Good Housekeeping

Good housekeeping requires the maintenance of a clean, orderly facility. Good housekeeping includes establishing housekeeping protocols to reduce the possibility of mishandling chemicals or equipment and training of employees in housekeeping techniques. Pollutants that may enter retention structures at CAFO sites due to poor housekeeping include oils, grease, paints, gasoline, truck washdown, solvents, litter, debris, pesticides, insecticides, and sanitary wastes. Good housekeeping protocol will include: (1) designating areas for equipment maintenance and repair; (2) providing waste receptacles at convenient locations for waste collection and disposal; (3) locating equipment washdown areas on site and providing appropriate control of washwaters; (4) providing protected storage areas for chemicals, paints, solvents, fertilizers and other potentially toxic materials; and (5) providing adequately maintained sanitary facilities.

#### (g) Spill Prevention and Response Procedures

Areas where potential spills can occur, and their accompanying drainage points should be identified in the PPP. Where appropriate, specifying material handling procedures and storage requirements in the plan should be considered. Procedures for cleaning up spills should be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available. Spill response procedures

should avoid discharging to retention structures unless necessary because of immediate safety considerations. The following information should be included in the PPP: (1) A written description of materials that are used, stored, or disposed of at the CAFO (such as pesticides, cleaning agents, fuels, etc.), (2) information on spills, including a list of spills and leaks of toxic or hazardous pollutants that occurred at the facility beginning one year prior to the effective date of these permits and have the potential to contribute pollutants to runoff waters, (3) a summary of any existing sampling data describing pollutants in previous discharges, (4) other information to consider, if applicable, include the manner and frequency in which pesticides, herbicides, fertilizers or soil enhancers are applied at the site and an evaluation of significant spills or leaks of conventional, toxic and hazardous pollutants based on a description of the materials released, an estimate of the volume of the release, the location of the release, and any remediation or cleanup measures taken.

#### (h) Sediment and Erosion Prevention

The PPP shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion and measures to limit erosion.

#### (i) Employee Training

Employee training programs are necessary to inform personnel, at all levels, of the responsibility of the requirements of the permit and of the procedures outlined in the PPP. Training should address topics such as spill response, good housekeeping and material management practices. A PPP should identify periodic dates for such training.

#### (j) Inspections and Recordkeeping

The facility operator or a responsible person will be named in the PPP to develop the plan and to conduct the required inspections and reporting. This person will assist the facility manager in the implementation, maintenance, and revision of the PPP. The activities and responsibilities of the designated person should include all aspects of the facility's PPP. However, the facility manager, not the employee, should have overall responsibility and accountability for the quality and implementation of the PPP.

Incidents such as spills, leaks and improper dumping, along with other information describing the quality and quantity of discharges should be included in the records. Inspections and

maintenance activities such as cleaning oil and grit separators or catch basins should be documented and recorded.

Typical inspections should include visual examination of pipes, pumps, tanks, supports, foundations, dikes, and drainage ditches. Material handling areas should be inspected for evidence of, or the potential for, pollutants entering the drainage system. A tracking or follow up procedure must be used to ensure that appropriate and adequate response and corrective actions have been taken. Records of inspections are required to be maintained.

It is important that permittees conduct annual site inspections to verify that the description of potential pollutant sources is accurate, the site drainage map has been updated or otherwise modified to reflect current conditions; and the controls outlined in the PPP to reduce pollutants are being implemented and are adequate. Records documenting significant observations made during the site inspection must be retained as part of the PPP for a minimum of three years. This allows EPA access to records of permit compliance much the same as all self-reported information required in other NPDES permits.

#### (k) Consistency With Other Plans

Facilities which have requirements for retention capacity and land application of wastes provided in site specific plans developed by NRCS, or BMP programs developed by a professional consultant may incorporate any part of such plans into the PPP by reference.

### VII. Other Permit Requirements

#### 1. Standard Permit Conditions

The draft permits include all of the standard conditions used in NPDES permitting to insure proper implementation of the permit requirements. Part IV of the proposed permit includes standard conditions and requirements.

#### 2. State Certification

Under CWA Section 401(a)(1), EPA may not issue an NPDES permit until the State/Tribe in which the discharge originates grants or waives certification to ensure compliance with appropriate requirements of the Act and State or Tribal law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable State/Tribal water quality standards or limitations. The proposed permits contain limitations intended to ensure compliance with State/Tribal water

quality standards and has been determined by EPA Region 6 to be consistent with the applicable State or Tribal water quality standards and the corresponding implementation plans. EPA Region 6 has requested that the (1) New Mexico Environmental Department provide certification of general permits Nos. NMG80000 and NMG810000, (2) Oklahoma Department of Agriculture provide certification of general permits Nos. OKG8000 and OKG810000, and (3) Texas Natural Resources Conservation Commission provide certification of general permits Nos. TXG80000 and TXG810000. EPA has also requested the following Pueblos in New Mexico: Pueblo of Isleta, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of Sandia, Pueblo of San Juan, Pueblo of Santa Clara, and Pueblo of Tesuque to provide certification of general permits Nos. NMG80000 and NMG810000.

#### 3. Reopener Clause

EPA reserves the right to revise, revoke or modify the draft permits to meet any applicable water quality standards if (1) effluent limitations or guidelines are established or modified in an approved State/Tribe Water Quality Management Plan or Waste Load Allocation and if they are more stringent than those listed in these permits or control a pollutant not listed in these permits; (2) a total daily maximum load (TDML) is developed to address pollution from CAFOs in a particular watershed. Permittees in that watershed may be required to obtain individual permits or to obtain coverage under an alternative general permit or the permits may be modified to include different limitations and/or requirements; (3) a particular watershed is identified by the State/Tribe as having been impaired by CAFO-related activities. Permittees in that watershed may be required to obtain individual permits or to obtain coverage under watershed-specific general permits or the permits may be modified to include different limitations and/or requirements.

The proposed permits are no discharge permits. In addition, the BMPs specified in Part II.D, when implemented as specified in the draft permits, will ensure that the State/Tribal water quality standards are protected. Any CAFO that is determined to be contributing to a violation of a water quality standard will not be eligible for coverage under this permit and may be required to apply for an individual or alternative general permit in accordance with Part I.F of these draft permits.

If and when a particular watershed is identified by the State/Tribe as having been impaired by CAFO-related activities, permittees in that watershed may be required to obtain individual permits or to obtain coverage under the watershed-specific general permits or the permits may be modified to include different limitations and/or requirements. Also, the watershed-specific general permits may be reopened or modified to reflect changes in the State/Tribe's listing of CAFO-impaired watersheds. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, and 122.64.

### VIII. Economic Impact

EPA believes that the proposed general permits will be economically beneficial to the regulated community. The proposed general permits provides an economic alternative to the individual NPDES permit application process that facilities covered by these permits would otherwise be required to follow. The requirements are consistent with those already imposed by effective Federal regulations and State/Tribal requirements. The suggested management practices and PPPs give the regulated facilities guidelines and options which may save them time and money.

### IX. Compliance With Other Federal Regulations

#### 1. NEPA Finding of No Significant Impact

For each new CAFO with more than 1000 animal units or the number and types of animals specified in Part VII.I(a) of the permit [40 CFR part 122, Appendix B(a)] and any existing CAFO planning to expand to the number and types of animals specified in Part VII.I(a), EPA will conduct a preliminary environmental review pursuant to the requirements of CWA Section 511(c) and the environmental review procedures found at 40 CFR Part 6, "Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act" for NPDES New Source Program. Therefore, new CAFOs and existing CAFOs subject to National Effluent Guidelines (40 CFR part 412) will be required to complete the form included in Addendum C of the proposed general permits and submit this information to EPA prior to coverage under the permits. The permittee must have documentation of "No Significant Impact" or a completed Environmental Impact Statement in accordance with an environmental

review conducted by EPA as a condition of permit coverage. This documentation must be retained on site.

## 2. Endangered Species Act

The proposed general permits will authorize no discharge, other than during catastrophic or chronic rainfall events which are relatively infrequent occurrences. Therefore, reissuance of these general permits is unlikely to adversely affect any listed threatened or endangered species or designated critical habitat. EPA will conduct an environmental review for each new CAFO with 1000 or more animal units and all existing CAFOs planning to expand to the numbers of animals specified in Part VII.I(a) of the draft permits [40 CFR part 122, Appendix B(a)]. This review will include an evaluation of the potential impact on endangered species due to the proposed activities.

EPA Region 6 has submitted copies of the proposed permits to the U.S. Fish & Wildlife Service. During the comment period of these proposed permits, EPA will seek the Fish & Wildlife Service's concurrence in its "unlikely to adversely affect" determination. In the absence of such concurrence, EPA will initiate formal consultation in accordance with Section 7(a)(2) of the Endangered Species Act.

## 3. National Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not eligible for coverage under these draft permits. During the application process, EPA will conduct an environmental review for each new CAFO with 1000 or more animal units and all existing CAFOs planning to expand to the number and types of animals specified in Part VII.I(a) of the draft permits [40 CFR Part 122, Appendix B(a)]. This review will include an evaluation of the potential effects on historic sites and properties due to the proposed activities. If, at any time during the operation of the CAFO, a permittee becomes aware that historic properties may be affected by CAFO-related activities not identified during the application process, the permittee must contact the State Historic Preservation Officer (SHPO) or the Tribal Historic Preservation Officer (THPO) to determine whether additional actions are required to meet the eligibility requirements of the draft permits. This may result in initiation of consultation with the SHPO or THPO and the development or modification of a written agreement or the PPP. Therefore, reissuance of these general

permits will not adversely affect any listed properties or properties that are eligible for listing in the National Register of Historical Places.

All existing CAFOs with less than 1000 AUs will not be eligible for coverage under the reissued permit if such facilities are already affecting properties that are listed in the National Register of Historic Properties. Existing CAFOs must comply with Part I.D(3) of the draft permit.

## 4. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements related to the NOI and discharge monitoring activities under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (OMB Nos. 2040-0086 and 2040-0004, respectively). EPA is currently developing the information collection request (ICR) (EPA ICR no. 1868.01) for the PPP-related activities and will submit the ICR to OMB for approval.

## 5. Coastal Zone Management Act Reauthorization Amendment

Pursuant to Section 307 of the Coastal Zone Management Act (CZMA), federal agency activities that affect the coastal zone of a state with an approved coastal zone management plan must be carried out in a manner consistent, to the maximum extent practicable, with the enforceable policies of that plan. To assure such consistency, EPA is proposing to require individual permits for CAFOs located within a mile of the Texas Coastal Zone Management Area. Applications for such individual permits will be subject to CZMA Section 307(c)(3)(A) and will receive the same type of review by the Coastal Coordination Council of the Texas General Land Office (Administrator of Texas' approved Coastal Zone Management Program) as corresponding permits issued by the Texas Natural Resources Conservation Commission receive under 31 Texas Administrative Code Section 505(11)(a)(6).

## 6. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), P.L. 104-4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall \* \* \* assess the effects of Federal regulatory actions \* \* \* (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)).

UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law \* \* \*".

NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes but are treated with rule-like procedures.

Signed this 18, day of June, 1998.

**Oscar Ramirez, Jr.,**

*Deputy Director, Water Quality Protection Division (6WQ), EPA Region 6.*

[FR Doc. 98-16943 Filed 6-23-98; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) submitted to OMB for Review and Approval

June 18, 1998.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance