

Notice of Public Hearings

Proposed Renewal of CAFO NPDES General Permit #01



Natural Resources Division
635 Capitol St. NE
Salem, OR 97301-2532
Phone: (503) 986-4792
Fax: (503) 986-4730
Contact: Wym Matthews
www.oregon.gov/ODA

Notice issued: September 11, 2008

What is proposed?

The Oregon Department of Agriculture (ODA) and the Department of Environmental Quality (DEQ) propose to renew National Pollutant Discharge Elimination System (NPDES) General Permit #01 for confined animal feeding operations (CAFOs). This permit regulates manure, litter, and process waste water generated by CAFOs. It was originally issued on August 15, 2003 and expired on July 31, 2008.

Who may be affected?

Owners and operators of CAFOs and residents in the vicinity of CAFOs may be affected by this permit renewal.

Public Hearings

Date: October 21, 2008

Time: 6:00 p.m. - Information Session
6:45 p.m. - Public Hearing

Location: Southern Oregon Research and Extension Center
569 Hanley Rd
Central Point, OR 97502

Date: October 22, 2008

Time: 6:00 p.m. - Information Session
6:45 p.m. - Public Hearing

Location: Food Innovation Center
Second Floor Classroom
1207 NW Naito Parkway
Portland, OR 97209

Date: October 23, 2008

Time: 6:00 p.m. - Information Session
6:45 p.m. - Public Hearing

Location: Boulevard Grange No. 389
3890 Hwy 201
Ontario, OR 97914

Written comments due:

5:00 p.m., October 27, 2008.

Where can I send comments?

ODA and DEQ accept comments by mail, fax, or e-mail. Please send to:

William Matthews
ODA
635 Capitol Street NE
Salem OR 97301
(503) 986-4792
(503) 986-4730 fax

wmatthew@oda.state.or.us

How can I get more information?

You can review the proposed permit and permit evaluation report at ODA, 635 Capitol St. NE., Salem OR 97301. For a review appointment, please call ODA at (503) 986-4699. You can also view the proposed permit and permit evaluation report online at:

<http://oregon.gov/oda/nrd>

What legal requirements apply?

Oregon Revised Statute 468B.050(1)(d); Oregon Administrative Rule (OAR) Chapter 340, Divisions 40, 41, 45, and 52; OAR Chapter 603, Division 74; and Title 40 Code of Federal Regulations (CFR) Parts 122 and 412.

Which CAFO activities are not under ODA or DEQ jurisdiction?

Land use decisions are not within ODA or DEQ jurisdiction.

Permit information

Permit coverage: Owners or operators of CAFOs required to obtain coverage under this permit are listed in Table 1, p. 3, of this notice. While this list has not changed since the initial adoption of this permit in 2003, the proposed renewal clarifies and provides more detail on the types of CAFOs that need to obtain permit coverage. Currently 581 CAFOs are registered under the 2003 general permit; they include:

- 316 dairy operations
- 41 poultry operations
- 162 beef and dairy heifer operations
- 62 "other" operations

Expiration date: The general permit will expire no more than five years from issuance.

Special conditions: The general permit continues to prohibit the discharge of process waste water and wastes, including manure, to surface waters and groundwater in violation of water quality standards. Animal waste management plans are also required to ensure that waste water and manure are applied to the land at agronomic rates so pollution of surface water and groundwater is prevented. These plans must be approved by ODA.

Summary of proposed changes to 2003 general permit: See Table 2, p. 3 of this notice for a summary of proposed changes to the general permit.



State of Oregon
Department of
Environmental
Quality

Water Quality Division
811 SW 6th Avenue
Portland, OR 97204
Phone: (541) 686-7799
(800) 844-8467
Fax: (541) 686-7551
Contact: Ranei Nomura
www.deq.state.or.us

Notice of Public Hearings: Proposed Renewal of CAFO NPDES General Permit #01

Permit information continued

Compliance history:

ODA strives to inspect each permitted CAFO on an annual basis. Over the term of the 2003 general permit, ODA conducted approximately 2830 inspections. About 80% of the inspections found permittees to be in compliance with permit conditions. Noncompliance issues ranged in severity. For example, of the 542 CAFOs inspected by ODA in 2007, 16 (< 3%) were discharging wastes in violation of permit conditions and 67 (< 13%) were in violation of reporting, recordkeeping, or other operational requirements. Detailed information on compliance history for individual CAFOs is available from ODA.

What other ODA or DEQ permits are required?

Generally, there are no other ODA or DEQ permits required at this time. CAFOs conducting composting activities may be required to obtain a DEQ permit for such activities. See OAR Chapter 340, Division 93, for more information.

What discretionary decisions might ODA and DEQ use in deciding to issue the permit?

The NPDES permit program provides some flexibility in developing requirements for monitoring, reporting, and animal waste management plans.

What are the known health effects or environmental impacts of the permitted substances stored, disposed of, discharged or emitted by the facility?

ODA estimates that the CAFOs registered under this permit generate 10 million tons of manure, litter, and process waste water on a yearly basis. The most common pollutants in manure, litter, and process waste water include biochemical oxygen demand (BOD), total suspended solids (TSS), nutrients (nitrogen and phosphorous compounds), and bacteria. As described below, these pollutants could be harmful if they are discharged to surface waters or groundwater in violation of water quality standards.

BOD depletes dissolved oxygen in surface water using the oxygen that would normally be needed to support aquatic life. Nutrients also exert a demand for oxygen by increasing algae and aquatic plant growth, and when the algae and plants decompose, dissolved oxygen levels will decrease. The lowering of dissolved oxygen levels in streams and lakes can cause fish kills. Other forms of nitrogen can also have negative effects: ammonia at high levels in surface water can be toxic to fish, and high nitrate levels in drinking water can be toxic to humans. Bacteria, viruses, and parasites found in animal waste can increase the risk of waterborne diseases. Fecal coliform and *E. coli* bacteria are commonly used as biological indicators to assess whether there is a threat to public health or beneficial uses of a water body (i.e., recreational, industrial, domestic drinking water supply, or agricultural uses).

How are the permitted substances measured?

The permit requires that process waste water and wastes, including manure, be regularly monitored to determine nutrient concentrations and land application volumes. Soil

from fields where waste water is irrigated is also monitored to determine if agronomic rates are being maintained.

How are water quality limited streams addressed and total maximum daily loads (TMDLs) implemented in this permit?

OAR 340-045-0035(3) requires ODA and DEQ to explain: 1) whether the proposed NPDES CAFO general permit allows the discharge of pollutants that affect parameters for which a water body may be water quality-limited under Section 303(d)(1) of the Clean Water Act, and 2) how this is acceptable. As explained below, the proposed permit does not allow such discharge.

As discussed previously in this notice, CAFOs covered by the general permit have the potential to discharge a variety of pollutants to receiving streams throughout the state. Many of these streams are listed as water quality-limited for dissolved oxygen, temperature, and bacteria. However, the general permit only allows discharges to surface waters in the event of a 25-year, 24-hour or greater rainfall event provided the discharge is in compliance with water quality standards. In addition, such discharges may only occur from waste management and storage facilities designed, constructed, operated, and maintained to contain all manure, litter, and process waste water including the runoff and direct precipitation from a 25-year, 24-hour rainfall event. ODA and DEQ do not expect water bodies to fail to meet water quality standards as a result of CAFO discharges during large rainfall events because of high flows in the receiving water bodies and diluted nature of discharges should they occur. Discharges are also not expected during summer months when water bodies are typically limited for dissolved oxygen, temperature, and bacteria because of fewer rain events.

As provided in the 2003 general permit and maintained in the proposed renewal, permit coverage may be terminated if TMDLs are established and a CAFO's discharge during large rainfall events is determined to be a contributor to a stream that is water quality limited. In these situations, an individual permit or different general permit may be required that would include waste load allocations.

What happens next?

ODA and DEQ will review and consider all comments received during the hearing and comment period. Following this review, ODA and DEQ may issue the permit as proposed, modify the proposal, or deny the permit.

What are ODA and DEQ responsibilities?

ODA and DEQ are the regulatory agencies that help protect and preserve Oregon's environment. One way ODA and DEQ do this is by requiring permits for certain activities.

Accessibility information

ODA and DEQ are committed to accommodating people with disabilities at our hearings. Please notify ODA of any special physical or language accommodations or if you need information in large print, Braille, or another format. To make these arrangements, contact ODA at (503) 986-4700 or DEQ's TTY number at (503) 229-6993.

Notice of Public Hearings: Proposed Renewal of CAFO NPDES General Permit #01

Table 1: CAFOs Requiring State Permit Coverage

Type of confined animal feeding operation requiring state permit coverage	State Small Confined (see permit definitions #18)	State Medium Confined (see permit definitions #17)	Small Concentrated (see 40 CFR §122.23)	Medium Concentrated (see 40 CFR §122.23)	Large Concentrated (see 40 CFR §122.23)
		<ul style="list-style-type: none"> • Confines for more than 4 months on prepared surface • Waste water control facility or disposal system for wet wastes 	<ul style="list-style-type: none"> • Confines for more than 4 months on prepared surface • Waste water control facility or disposal system for wet or dry wastes 	<ul style="list-style-type: none"> • Stabled or confined and fed or maintained for total of 45 days or more in any 12-month period • Crops, vegetation, forage growth, or post-harvest residues not sustained in normal growing season in lot or facility • Pollutants discharged to surface waters • Designated by the Director 	<ul style="list-style-type: none"> • Stabled or confined and fed or maintained for total of 45 days or more in any 12-month period • Crops, vegetation, forage growth, or post-harvest residues not sustained in normal growing season in lot or facility • Pollutants discharged to surface waters
mature dairy cows ¹	<200	200-699	<200	200-699	≥700
veal calves	<300	300-999	<300	300-999	≥1,000
cattle ²	<300	300-999	<300	300-999	≥1,000
swine ≥ 55 lbs	<750	750-2,499	<750	750-2,499	≥2,500
swine < 55 lbs	<3,000	3,000-9,999	<3,000	3,000-9,999	≥10,000
horses	<150	150-499	<150	150-499	≥500
sheep or lambs	<3,000	3,000-9,999	<3,000	3,000-9,999	≥10,000
turkeys	<16,500	16,500-54,999	<16,500	16,500-54,999	≥55,000
laying hens or broilers w/wet waste system	<9,000	9,000-29,999	<9,000	9,000-29,999	≥30,000
chickens ³ w/wet waste system	<37,500	37,500-124,999	<37,500	37,500-124,999	≥125,000

¹ Whether milked or dry.

² Other than mature dairy cows or veal calves; cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.

³ Other than laying hens.

Table 2: Summary of Proposed Changes

ISSUE	PROPOSED PERMIT	FOR MORE INFO. [See Evaluation Report]
Definitions	Definitions moved to its own section at front of permit. References replace detail when applicable. Added definition of frozen soil, saturated soil, and state small and medium confined animal feeding operations. Removed definitions that are no longer applicable.	Section 6.3.
SI. PERMIT COVERAGE		
When is a Permit Required?	Insertion of table to clarify when a permit is required.	Section 6.4, <i>SI.A When is a Permit Required</i>
Schedule to Obtain Permit Coverage	Simplified schedules from six categories to three: 1. Proposed facilities and those electing permit coverage: <i>Application to Register (ATR)</i> & animal waste management plan (AWMP) due 180 days before commencing operation. 2. Renewals: Renewal application due according to date specified by ODA but no later than expiration date of permit. 3. Designated as concentrated or electing coverage: <i>ATR & AWMP</i> due 180 days before commencing operation.	Section 6.4, <i>SI.C Requirements and Schedule to Obtain Permit Coverage</i>
Explanation of need to request confidentiality	New language included because of new public notice provision, see below.	Section 6.4, <i>SI.G Request for Confidentiality</i>
Public participation (public notice and hearing opportunity)	Issuance of 2003 general permit was noticed and hearings were held; however, individual registrations to general permit were not noticed. Issuance of 2008 general permit will be noticed and hearings held as usual. In addition, to comply with 2005 2 nd Circuit Court decisions, individual ATRs and AWMPs must also be noticed. Permit proposes: <ul style="list-style-type: none"> • Public notice of new registrations (detailed information provided) through newspaper, website, and email. • Expedited public notice (facility name and county provided) through email and website. • Opportunity for public hearing. 	Section 6.4, <i>SI.H Public Notice and Participation Requirement</i>

Notice of Public Hearings: Proposed Renewal of CAFO NPDES General Permit #01

ISSUE	PROPOSED PERMIT	FOR MORE INFO. [See Evaluation Report]
S2. DISCHARGE LIMITATIONS AND OPERATING REQUIREMENTS		
New source swine, poultry, and veal <i>large concentrated</i> AFO limitation	Removed reference to 100 year, 24-hr rainfall event as a result of 2 nd Circuit Court decision (<i>Waterkeeper Alliance et al. v. EPA</i> , 399 F.3d 486 (2 nd Cir. 2005)).	Section 6.5, <i>S2.B Production Area Limitations</i>
Applications to frozen soil	New requirement to include frozen soil application procedures in AWMP	Section 6.5, <i>S2.C Land Application Limitations</i>
Applications to saturated soils	Clarification that in some cases an application to saturated soils may be a desired alternative to allowing waste storage facilities to overflow directly to surface waters. In these situations, the application is considered an “upset” and general condition G18 must be followed.	Section 6.5, <i>S2.C Land Application Limitations</i>
Setback requirement	2003 general permit required <i>large concentrated animal feeding operation</i> to have a 100ft setback, 35ft vegetative buffer, or demonstration of alternative. Revised permit expands setback requirement to all CAFOs, but does not specify size for non-large concentrated animal feeding operations.	Section 6.5, <i>S2.J Setback Requirement</i>
Manure, litter, or process waste water transfer	Clarification that permittee retains responsibility for manure, litter, or process waste water until transfer or export is completed with the required documentation. Specifies that <i>large concentrated animal feeding operation</i> must have current manure nutrient analysis from the previous 12 months.	Section 6.5, <i>S2.K Manure Litter, or Process Waste Water Transfers</i>
S3. ANIMAL WASTE MANAGEMENT PLANS (AWMPs)		
AWMP implementation and compliance	2003 general permit has a December 31, 2006 due date for implementation of AWMPs. This due date is still applicable for most CAFOs under the existing general permit. Under revised permit, AWMPs from new applicants and revisions to existing AWMPs must be implemented by February 27, 2009. New applicants commencing activities after February 27, 2009 must have ODA-approved AWMP implemented at start-up.	Section 6.6, <i>S3.A AWMP Implementation and Compliance</i>
AWMP elements	More information on land application protocols that need to be detailed added. Compost management plan requirement if applicable under OAR 340-096 included. Added requirements for frozen soil applications and requirement to include procedures for transfer or export of manure, litter, or process waste water.	Section 6.6, <i>S3.C AWMP Elements</i>
S4 MONITORING, INSPECTION, RECORDKEEPING, AND REPORTING REQUIREMENTS		
Analytical monitoring requirements	No major changes. Reformatted into a table and additional information added on specific parameter to be analyzed provided and sample method references.	Section 6.7, <i>S4.A Monitoring Requirements</i>
Inspection requirements	No major changes. Reformatted into a table and clarification added that equipment used for land application need only be inspected when in use.	Section 6.7, <i>S4.B Inspection Requirements</i>
Recordkeeping and reporting requirements	No major changes. Reformatted into a table and deleted requirement to maintain animal mortality management and practices because it is required in AWMP.	Section 6.7, <i>S4.C Recordkeeping and Availability Requirements</i>
Annual report	Added requirements to report number of animals by type averaged over the year and estimate of total manure, bedding, litter, process waste water, and other material that comes into contact with manure. Certification statement requirement that information is true, accurate, and complete also added.	Section 6.7, <i>S4.D Reporting Requirements</i>
Additional monitoring	Added statement to notify permittees that if they have two or more discharges within a 24 month period that are not associated with a 25-year, 24-hour or greater rainfall event, ODA may require surface water and/or groundwater quality monitoring or transfer the permittee to an individual permit.	Section 6.7, <i>S4.E Additional Monitoring</i>
GENERAL CONDITIONS		
General conditions	Provided federal requirements in detail (2003 general permit provided only a reference to most federal requirements). Eliminated state requirements if duplicated in federal requirements.	Section 6.8 General Conditions