



Archived Publication

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EPA promulgated regulations for Concentrated Animal Feeding Operations (CAFOs) in February 12, 2003 that expanded the number of operations covered by the CAFO regulations and included requirements to address the land application of manure from CAFOs. The rule became effective on April 14, 2003. NPDES-authorized states were required to modify their programs by February 2005 and develop state technical standards for nutrient management. On February 28, 2005, in response to litigation brought by various organizations, the Second Circuit court issued its decision in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2d Cir. 2005). EPA has updated the CAFO rule to reflect the changes requested by the Court. Visit www.epa.gov/npdes/caforule to view the 2008 CAFO Final Rule and supporting documents.



What Are the CAFO Regulations?

This guide covers the requirements in the February 2003 revised federal regulations for concentrated animal feeding operations (CAFOs). The regulations are

- The National Pollutant Discharge Elimination System (NPDES) Permit Regulation for CAFOs (40 CFR Part 122).
- The Effluent Limitations Guidelines and Standards (ELGs) for CAFOs (40 CFR Part 412).

EPA issues, enforces, and occasionally updates its regulations. Both of the regulations above have requirements for CAFOs, so EPA revised them at the same time to make sure that their requirements are consistent.

 Preamble: Section I.A [68 FR 7179]

What is the NPDES Program?

The NPDES Program was created under the federal Clean Water Act to protect and improve water quality by regulating point source dischargers.

Point source dischargers are operations that *discharge pollutants from discrete conveyances* directly into *waters of the United States*. Point source dischargers are regulated by NPDES permits.

An NPDES permit

- Identifies wastewater discharges to surface waters from the point source facility.
- Sets requirements designed to protect water quality (such as discharge limits, management practices, and record-keeping requirements)

GLOSSARY

A *discharge*, in general, is the flow of treated or untreated wastewater from a facility to surface water.

GLOSSARY

The term *pollutant* includes a wide variety of materials that might contaminate waters of the U.S. Pollutants from CAFOs might include nutrients, suspended solids, oxygen-demanding substances, or pathogens.

that the discharger must meet.

- Allows an operation to discharge pollutants as long as the operation meets the requirements in the permit.

If a facility discharges pollutants without having a permit, or has a permit but does not meet the requirements, it is violating the Clean Water Act. Its owner or operator could be subject to enforcement.

GLOSSARY

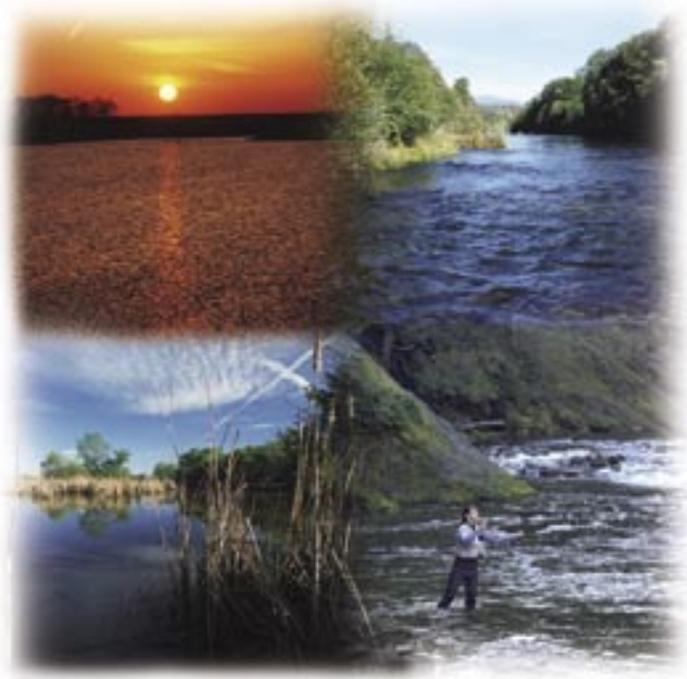
A *discrete conveyance*, in general, is any single, identifiable way for pollutants to be carried or transferred to waters, such as a pipe, ditch, or channel.



A pipe or ditch that carries wastewater to a stream is a discrete conveyance.

GLOSSARY

Where this guide says *surface waters*, it means “waters of the United States.”



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Many different types of surface waters are considered waters of the United States.

Under the Clean Water Act, CAFOs are defined as point source dischargers. The revised NPDES CAFO regulation requires all CAFOs to apply for a permit. So if you own or operate a CAFO, you must apply for and comply with the conditions in an NPDES permit. If the owner and operator are different people, only one of them needs to apply for a permit. The NPDES regulation describes which operations qualify as CAFOs and sets the basic requirements that will be included in all CAFOs' permits.

Every CAFO has a duty to apply for a permit. Owners or operators of CAFOs that do not discharge must still contact their permitting authority and provide certain information to avoid permitting requirements. (See "Are there any CAFOs that do not need a permit?" on page 17 of this guide.)

Different kinds of CAFOs have different deadlines for when their operators must apply for NPDES permits. See "When do I have to get an NPDES permit?" on page 22 of this guide for more detail on permit application deadlines.

What is a permitting authority? The agency responsible for issuing NPDES permits in a state is called the permitting authority. (See "Who is in charge of the CAFO permitting program where I live—EPA or the state?" on page 1 of this guide.)

GLOSSARY

The term *waters of the United States* is defined at 40 CFR 122.2. Where this guide says "surface waters," it means "waters of the United States," which include, but are not limited to

- ✓ Waters used for interstate or foreign commerce (for example, the Mississippi River or the Gulf of Mexico).
- ✓ All interstate waters, including wetlands (any river, stream, lake, or other water body that crosses state borders).
- ✓ Waters used for recreation by interstate or foreign travelers (for example, a lake in one state that attracts fishermen from neighboring states).
- ✓ Waters from which fish or shellfish are taken to be sold in other states or countries.
- ✓ Waters used for industrial purposes by industries involved in interstate commerce.
- ✓ Tributaries and impoundments or dams of any waters described above.
- ✓ Territorial seas.
- ✓ Wetlands adjacent to any waters described above.

"Waters of the United States" **does not** include

- ✗ Ponds or lagoons designed and constructed specifically for waste treatment systems.
- ✗ Wetlands that were converted to cropland before December 23, 1985.

These are only examples of the kinds of waters that are considered waters of the United States. See the complete regulatory definition in the glossary in this guide to see what other kinds of waters may also be considered waters of the United States.

What are the Effluent Limitations Guidelines for CAFOs?

For CAFOs and certain other industries, EPA has preset some of the minimum requirements that go into each permit in regulations called "effluent limitations guidelines" (ELGs). When the permitting authority issues a permit for your CAFO, it does not set your permit requirements on its own. Instead, it places the requirements of the ELGs directly into your permit. These requirements may consist of both limits on the amount of a pollutant that can be discharged (numerical limits called "discharge limits") and other ELG requirements (management practices and record-keeping requirements). Your state permitting authority may also set additional requirements that are needed to protect water quality or other requirements that apply under state or local law.

The ELGs for CAFOs include both discharge limits and certain management practice requirements. Note, however, that for most animal types, the ELGs for CAFOs apply only to Large CAFOs.¹ Permitting authorities will set effluent limitations for Medium and Small CAFOs on a case-by-case basis depending on the specific situation at the CAFO and based on the best professional judgment (BPJ) of the permitting authority. In many cases, those requirements may be similar to the requirements for Large CAFOs.

Why are these regulations important?

EPA has revised these regulations to reflect changes in the animal production industry since the original regulations were passed in the 1970s. Out of 257,000 AFOs in the United States today, about 15,500 are CAFOs. These operations generate manure, litter, and *process wastewater* that can contain pollutants like nitrogen, phosphorus, metals, and bacteria. If CAFO operators don't manage these materials properly, they could release pollutants into the environment through spills, overflows, or runoff. These releases, in turn, might pollute surface waters and threaten the health of people and animals. On the other hand, when operators manage manure,

litter, and process wastewater properly, they help to prevent water pollution and its negative impacts. The CAFO regulations were revised to reflect current practices in the industry and to set basic standards for CAFO operators to properly manage the manure, litter, and process wastewater generated at their operations.

The revised regulations focus on the CAFOs that pose the greatest risk to water quality. By regulating mainly Large CAFOs and some smaller CAFOs that pose a high risk to water quality, EPA is regulating close to 60 percent of all manure generated by operations that confine animals.

 *Preamble: Sections I.B and C [68 FR 7179 and 7180]*

Do other laws regulate CAFOs?

Although this guide explains what you have to do to comply with the federal CAFO regulations, your state, county, or town might have more requirements or more specific requirements designed to address particular circumstances. Your permitting authority can set additional requirements in your permit if it finds them necessary. State regulations must include the federal requirements, but they can also be broader, stricter, or more specific. To learn about the regulations in your state, contact your permitting authority. (The appendix to this guide contains a list of permitting authorities.)

Your NPDES permit might include other federal requirements that apply to point source dischargers (for example, requirements under the Endangered Species Act, the National Historic Preservation Act, and the Total Maximum Daily Load (TMDL) program). CAFOs might also be subject to other federal requirements under, for example, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Spill Prevention, Containment, and Countermeasure (SPCC) regulations. Work with your permitting authority to make sure you are complying with all requirements that apply to your operation.

 *Preamble: Sections IX and X [68 FR 7250 and 7252]*

GLOSSARY

Process wastewater is water used directly or indirectly in the operation of an AFO for any or all of the following:

- Spillage or overflow from animal or poultry watering systems.
- Washing, cleaning, or flushing pens, barns, manure pits, or other facilities.
- Direct contact swimming, washing, or spray cooling of animals.
- Dust control.

Process wastewater also includes any water that comes into contact with any raw materials, products, or by-products including manure, litter, feed, milk, eggs, and bedding.

¹ For Duck CAFOs, the ELGs apply to all operations with 5,000 or more ducks, whether they are Large, Medium, or Small CAFOs. (See "Effluent limitations for Large CAFOs" on page 28 of this guide.)

