



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.



How Do I Apply for a Permit?

You must get the forms you need to apply for an NPDES permit from your permitting authority. Under the federal NPDES regulations, there are two kinds of permits—general permits and individual permits. Each permitting authority adopts its own rules about what types of permits operations need, so you should contact your permitting authority.

 Preamble: IV.B.4 and 5 [68 FR 7195 and 7196]

What is an NPDES general permit?

An NPDES general permit has one set of requirements for a group of facilities. For example, all CAFOs or all poultry CAFOs in a particular area, such as an entire state or a watershed within the state, might be covered under one general permit. The permitting authority sets the permit conditions, issues a draft permit, and requests comments from the public. The permitting authority makes changes to the draft permit based on the public comments and then issues the final permit. The general permit specifies what kinds of operations can be covered. Owners and operators of eligible operations may then apply for coverage under the permit.

Operators of CAFOs that are eligible for coverage under a general permit may notify the permitting authority that they want to be covered by submitting a Notice of Intent (NOI). If an NPDES general permit

is available in your state and your operation meets the eligibility requirements, you must fill out an NOI and submit it to your permitting authority to apply for coverage under the general permit. The general permit will tell you how to apply for coverage and when your coverage will become effective.

What is an NPDES individual permit?

An NPDES individual permit contains requirements designed specifically for one CAFO. You must apply for an NPDES individual permit if

- A general NPDES permit is not available,
- Your CAFO isn't eligible to be covered under the general NPDES permit,
- You want an individual NPDES permit, or
- Your permitting authority requires you to apply for an individual permit.

To apply for an individual permit, you must fill out either NPDES Forms 1 and 2B or similar forms required by your state. (Contact your permitting authority for the proper forms.) You must complete the forms and submit them to your permitting authority. When your permitting authority receives your permit application, it will use the information you've submitted to draft a permit for your operation. Your permitting authority will base your permit requirements on the unique conditions at your operation. After a public comment period on the draft permit, your permitting authority will modify the draft, if necessary, and then issue your final NPDES individual permit.

What information do I have to include in my NOI or permit application?

When you apply for a general or individual NPDES permit, you must give the following information to your permitting authority:

- The name of the CAFO's owner or operator.
- Your CAFO's location and mailing address.



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- The latitude and longitude of the entrance to your CAFO's production area.
- A topographic map of the area where your CAFO is located, with the location of the production area specifically marked.
- The number of each kind of animal in confinement.
- The kinds of structures you use to contain or store manure, litter, and process wastewater and the total amount that each structure can store.
- The total number of acres under the control of your CAFO that are available for land application of manure, litter, and process wastewater.
- An estimate of the amount (tons or gallons) of manure, litter, and process wastewater your operation generates each year.
- An estimate of the amount (tons or gallons) of manure, litter, and process wastewater you transfer to other persons each year.

Check EPA's Web site at <http://cfpub.epa.gov/npdes/stormwater/latlong.cfm> to find out how to determine the latitude and longitude and where to get a topographic map for your location.

If you apply for a permit after December 31, 2006, your application must also contain a statement certifying that you have developed and will implement a nutrient management plan. You must have a current nutrient management plan for as long as your operation is covered by an NPDES permit.

The items listed above are the minimum that you must submit. Your permitting authority may require you to submit additional information.

▀ Regulation: 40 CFR 122.21 and 122.28 [68 FR 7265 and 7268]
Preamble: IV.B.6 [68 FR 7206]

When do I have to get an NPDES permit?

Your permit application deadline depends on whether your operation is an existing CAFO, a newly defined CAFO, a new discharger, or a new source or has been designated as a CAFO by the permitting authority. Each of these categories has a different deadline for applying for an NPDES permit. Read the descriptions below to determine when you have to apply for an NPDES permit.

You are responsible for applying for NPDES permit coverage for your CAFO. The federal regulations do not require your permitting authority to notify you that you must apply. For an individual permit, the permitting authority issues a permit after it receives a permit application from the facility seeking coverage. For a general permit, the permitting authority issues the general permit, and then operators submit NOIs to be covered under the permit. In both instances, the permitting authority is required to provide public notification that a permit has been drafted. In addition, although permitting authorities are not required to do so, many are likely to conduct outreach to communicate who must obtain a permit and how to do so. Ultimately, however, the responsibility to seek permit coverage lies with the CAFO. Your failure to seek coverage by the permitting deadlines described below could result in liability under the Clean Water Act and you may have to pay penalties.

▀ Regulation: 40 CFR 122.23(g) [68 FR 7267]
Preamble: IV.B.3 [68 FR 7203]

Existing CAFOs

Existing CAFOs are operations that were defined as CAFOs under the 1976 NPDES CAFO regulations. If you operate an existing CAFO, you should already have an NPDES permit. You will have to reapply for a new permit 180 days before your existing permit expires, unless your permit indicates otherwise. Existing operations that appropriately claimed the 25-year, 24-hour storm permit exemption under the 1976 regulations would have until no later than February 13, 2006 to apply for a permit. See Table 13 to figure out whether your operation was previously regulated. If your CAFO was covered under the 1976 NPDES CAFO regulations but you don't have an NPDES permit, you must apply for an NPDES permit immediately.



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Table 13. Size category thresholds for existing CAFOs

Sector	Existing CAFOs (covered under the 1976 NPDES CAFO regulations)	
	Large	Medium ^a
Slaughter and feeder cattle	1,000 or more	300–999
Mature dairy cows	700 or more	200–699
Swine (55 pounds or more)	2,500 or more	750–2,499
Horses	500	150–499
Sheep or lambs	10,000 or more	3,000–9,999
Turkeys	55,000 or more	16,500–54,999
Laying hens or broilers (continuous overflow watering)	100,000 or more	30,000–99,999
Laying hens or broilers (liquid manure handling system)	30,000 or more	9,000–29,999
Ducks	5,000 or more	1,500–4,999

^aThe criteria for operations to be defined as Medium CAFOs were the same in the old regulation as in the revised NPDES regulation. (See “Which AFOs are defined as CAFOs?” on page 8 of this guide.)

Newly defined CAFOs

Newly defined CAFOs are operations that are defined as CAFOs as of April 14, 2003 (the effective date of the revised regulations), but were not defined as CAFOs under the old NPDES regulation. Your operation might be a newly defined CAFO if it is a dry waste chicken operation, a stand-alone dairy heifer operation, or a swine nursery that existed before April 14, 2003. Your operation might also be a newly defined CAFO if you were entitled to the 25-year, 24-hour storm permitting exemption under the old regulation. That exemption has been eliminated. Table 14 shows which operations are newly defined CAFOs. If you own or operate a newly defined CAFO, you should contact your permitting authority to find out when to apply for an NPDES permit. Each permitting authority may set its own deadline for when you must apply, but the deadline must be no later than February 13, 2006.



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Table 14. Size category thresholds for newly defined CAFOs

Sector	Newly defined	
	Large	Medium
Swine (less than 55 pounds)	10,000 or more	3,000–9,999
Laying hens—operations that do not have liquid manure handling systems	82,000 or more	25,000–81,999
Chickens other than laying hens—operations that do not have liquid manure handling systems	125,000 or more	37,500–124,999
Dairy heifers	1,000	300–999

New dischargers

New dischargers are operations that met the CAFO definition after the revised regulations went into effect (after April 14, 2003) but are not new sources. Your operation might be a new discharger, for example, if it is a newly constructed Medium CAFO because Medium and Small CAFOs in most animal sectors are never defined as new sources. (See “New sources” on page 24 of this guide.) It

might also be a new discharger if it is an existing AFO and you increase the number of animals, or otherwise change the operation, so that it meets the CAFO definition. (See “What is a CAFO?” on page 8 of this guide.) There are three different permit application deadlines for new dischargers:

1. If you build a new operation that is not subject to the ELGs (for example, it meets the definition of a Medium CAFO, or it confines animals other than the types covered by the ELGs), you must apply for an NPDES permit at least 180 days before you begin to operate your new CAFO.
2. If you increase the number of animals or make other changes at your operation so that it meets the definition of a CAFO, and the CAFO is not in a newly defined sector (see Table 14), you have 90 days after you make the change to your operation to apply for an NPDES permit.
3. If you increase the number of animals or make other changes at your operation so that it meets the definition of a CAFO, but the changes you make would not have made your operation a CAFO under the old regulations, you have until April 13, 2006, or 90 days after you make the changes at your operation, whichever is later, to apply for an NPDES permit. For example, your operation would fit this description if you're increasing the number of animals so that it will become a CAFO and the CAFO is in a newly defined sector (see Table 14).

New sources

A Large CAFO is a new source if construction began after April 14, 2003, on a site where no other source is located. An operation may also be a new source if it expands its operations. Specifically, it would be a new source if the process or production equipment is totally replaced, or if it adds new processes that are substantially independent of an existing source at the same site.

In most cases, only Large CAFOs may be new sources. The term *new source* is used only in connection with facilities that are subject to New Source Performance Standards (NSPS), and in most cases only Large CAFOs are subject to the CAFO NSPS (see 40 CFR Part 412).² For most animal sectors, a newly constructed operation that is either a Medium or Small CAFO is a new discharger rather than a new source.

Example of new sources:

- A brand new Large swine CAFO that is constructed where no CAFO previously existed.
- A 500-head dairy AFO that expands to add 3,000 mature dairy cattle and includes new construction that will replace the existing milking and manure handling equipment.
- An existing 75,000-bird turkey CAFO that expands to add a 7,000-bird, wet lot duck CAFO with a separate waste handling system. In this case, the permit would continue to apply to the turkey facilities and would add new source requirements for the duck lot.

If you own or operate a new source CAFO, you must apply for a permit at least 180 days before you begin to operate the CAFO.

 *Regulations: 40 CFR 122.2 and 122.29(b)*

Designated CAFOs

Designated CAFOs are small and medium AFOs that the permitting authority has designated as CAFOs. (See “Which AFOs may be designated as CAFOs?” on page 9 of this guide.) If your permitting authority has notified you that it has designated your operation as a CAFO, you must apply for a permit within 90 days after receiving the notice.

When will my NPDES permit expire?

Individual NPDES permits are usually written for 5-year terms and are reissued every 5 years. You should check the expiration date of your permit.

General NPDES permits also are usually written for 5-year terms. Because a general NPDES permit is created for multiple permittees, however, it could have been issued several years before you submitted your NOI. If this is the case, the general NPDES permit might expire less than 5 years after you submit your NOI.

To reapply for a permit when it is due to expire, you must submit a new application form (for an individual permit) or a new NOI (to be covered under a general permit) 180 days before your permit's expiration date. If you have met this deadline and your permitting authority fails to reissue your NPDES permit before the expiration date, your current NPDES permit will remain in effect until the permitting authority acts on your new application.

Some permitting authorities might have other deadlines or procedures for reissuing CAFO NPDES

² For duck CAFOs, operations with 5,000 or more birds are subject to NSPS if they meet the new source definition. This threshold corresponds to Large duck CAFOs with liquid manure handling systems and Large, Medium, and some Small duck CAFOs with other than liquid manure handling systems.

permits. For example, some general permits are automatically continued without submitting a new NOI. Check the reapplication procedures specified in your permit, and contact your permitting authority to find out exactly what you must do to get a new permit when your current permit is due to expire.

How long should I keep my NPDES permit?

You must have an NPDES permit in effect for your operation as long as it is an operating CAFO. There are a few situations in which you can discontinue your NPDES permit coverage:

- You close your operation.
- You permanently change your operation so that it no longer meets the definition of a CAFO.
- You change your operation so that it cannot and will not discharge. In this case, you'll need a "no potential to discharge" determination from your permitting authority before you discontinue your NPDES permit coverage. (See "How can I get a 'no potential to discharge' determination?" on page 18 of this guide.)

Under all circumstances, you must have an NPDES permit in effect until you properly dispose of all manure, litter, and process wastewater that was generated at the CAFO so that your operation no longer has a potential to discharge to waters of the United States. If your operation still has a potential to discharge when your permit is due to expire, you must reapply for a permit. Once you have properly disposed of the manure, litter, and process wastewater so that there is no longer a potential to discharge, you may ask your permitting authority to terminate your permit. Contact your permitting authority to find out more about how to terminate your permit. (You can find contact information for your permitting authority in the appendix to this guide.)

 Regulation: 40 CFR 122.23(h) [68 FR 7268]
Preamble: IV.C.6 [68 FR 7229]

