



# Fact Sheet

Public Comment Start Date: November 16, 2009

Public Comment Expiration Date: January 19, 2010

Technical Contact: Nicholas Peak  
208-378-5765  
peak.nicholas@epa.gov

## **Proposed Reissuance of a National Pollutant Discharge Elimination System (NPDES) Permit to Discharge Pollutants Pursuant to the Provisions of the Clean Water Act (CWA)**

### **Concentrated Animal Feeding Operations in the State of Idaho**

#### **EPA Proposes To Reissue NPDES Permit No. IDG01000**

EPA Region 10 proposes to reissue a National Pollutant Discharge Elimination System (NPDES) general permit for concentrated animal feeding operations (CAFOs) in Idaho, including CAFOs located on tribal lands (Proposed Permit). The Proposed Permit authorizes and sets conditions for the discharge of pollutants from these CAFOs to waters of the United States. Many of these CAFOs were previously covered under the General Permit for Concentrated Animal Feeding Operations in Idaho, NPDES Permit No. IDG01000. The permit went into effect on May 27, 1997 and expired on May 27, 2002. In order to ensure protection of water quality and human health, the Proposed permit contains new requirements contained in new revised CAFO regulations at 40 CFR Parts 122 and 412. *See* 73 Fed. Reg. 70418 (Nov. 20, 2008).

This Fact Sheet includes:

- information on public comment, public hearing, and appeal procedures
- a listing of proposed effluent limitations and other conditions for the facility
- a map and description of the discharge location
- technical material supporting the conditions in the permit

#### **State Clean Water Act Section 401 Certification**

EPA requests that the Idaho Department of Environmental Quality (DEQ) certify this Proposed permit under provisions of Section 401 of the Clean Water Act, 33 U.S.C. § 1341. EPA may not issue the NPDES permit until the State of Idaho has granted, denied, or waived certification. The State of Idaho provided a draft certification for the permit (see Appendix A). For more information about the draft certification, please contact Johnna Sandow, at (208) 373-0163 or at [Johnna.Sandow@deq.idaho.gov](mailto:Johnna.Sandow@deq.idaho.gov). Comments regarding the certification should be directed to:

Barry N. Burnell  
Administrator, Water Quality Division  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706

## Public Comment

Persons wishing to comment on the Proposed permit may do so in writing by the expiration date of the public notice. All comments must be in writing and must include the commenter's name, address, telephone number, the permit name, and the permit number. Comments must include a concise statement of their basis and any relevant facts the commenter believes EPA should consider in making its decision regarding the conditions and limitations in the final permit. All written comments and requests must be submitted to the attention of the Director, Office of Water and Watersheds at the following address: U.S. EPA, Region 10, 1200 6th Avenue, Suite 900, OWW-130, Seattle, WA 98101. Alternatively, comments may be submitted by facsimile to 208-378-5744; or submitted via e-mail to [peak.nicholas@epa.gov](mailto:peak.nicholas@epa.gov) by the end date of the public comment period.

Three public informational meetings will be held to discuss the Proposed permit and to answer general questions. These informational meetings will not serve as a formal public hearing on the permit. The three public meetings will be held on:

Location:	Time/Date:
Idaho Department of Fish and Game Southeast Regional Office 1345 Barton Road Pocatello, ID 83204	December 8, 2009 1:00 pm – 5:00 pm
Idaho Department of Fish and Game Magic Valley Regional Office 324 South 417 East - Suite 1 Jerome, ID 83338	December 9, 2009 10:00 am – 2:00 pm
Idaho Department of Fish and Game Southwest Regional Office 3101 S. Powerline Rd. Nampa, ID 83686	December 10, 2009 10:00 am – 2 pm

Persons wishing to request that a public hearing be held may do so, in writing, by the end date of this public comment period. A public hearing is a formal meeting, on the record, wherein EPA officials hear the public's views and concerns about an EPA action or proposal. A request for a public hearing must state the nature of the issues to be raised, reference the permit name and NPDES permit number, and include the requester's name, address, and telephone number.

After the comment period closes, and all significant comments have been considered, EPA will review and address all submitted comments. EPA's Regional Director for the Office of Water and Watersheds will then make a final decision regarding permit issuance. If no comments are received, the tentative conditions in the Proposed permit will become final. The permit will become effective 30 days after it is issued, unless it is stayed by the court in response to an appeal. Pursuant to Section 509(b)(1) of the Clean Water Act, 33 U.S.C. 1369(b)(1), any interested person may appeal the permit in the Ninth Circuit Court of Appeals within 120 days following notice of EPA's final decision for the permit.

## Documents are Available for Review

The proposed permit and related documents can be reviewed or obtained by visiting or contacting EPA's Regional Office in Seattle between 8:30 a.m. and 4:00 p.m., Monday through Friday at the address below. The draft permits, fact sheet, and other information can also be found by visiting the Region 10 NPDES website at "<http://epa.gov/r10earth/waterpermits.htm>."

United States Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, OWW-130  
Seattle, Washington 98101  
(206) 553-0523 or  
Toll Free 1-800-424-4372 (within Alaska, Idaho, Oregon and Washington)

The fact sheet and proposed permit are also available at:

United States Environmental Protection Agency  
Region 10, Idaho Operations Office  
1435 N. Orchard Street  
Boise, Idaho 83706

## **INTRODUCTION**

Section 301(a) of the Clean Water Act (CWA), 33 USC § 1311(a), prohibits the discharge of pollutants to waters of the U.S. except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. CWA Section 402, 33 USC § 1342, authorizes EPA to issue NPDES permits authorizing such discharges subject to requirements that implement CWA Sections 301, 304, and 401, 33 USC §§ 1311, 1314, and 1341.

These requirements must include effluent limitations that implement technology-based limits as well as any more stringent limit necessary to protect state water quality standards. Violation of a condition contained in an NPDES permit, whether an individual or general permit, is a violation of the CWA and subjects the operator of the permitted facility to the penalties specified in Section 309 of the CWA, 33 USC § 1319.

40 CFR 122.28 allows EPA to issue general permits to regulate numerous facilities in one permit when the facilities:

- Are located within the same geographic area;
- Involve the same or substantially similar types of operations;
- Discharge the same types of wastes;
- Require the same effluent limits or operating conditions;
- Require the same or similar monitoring requirements; and
- In the opinion of EPA, are more appropriately controlled under a general permit rather than an individual permit.

Using general permits conserves resources and reduces the paperwork burden associated with obtaining discharge authorization for the regulated community. In addition, all of the CAFOs subject to this permit require the same effluent limits, operating conditions, and monitoring requirements. Moreover, they are all the same or substantially similar operations and all the CAFOs are located within the state of Idaho. Therefore, EPA has determined that a general permit is the appropriate mechanism to address the majority of CAFOs that are subject to the requirements of the NPDES program and the CWA.

## **I. PERMIT AREA AND COVERAGE**

### **A. Permit Coverage Area**

The Proposed permit offers NPDES permit coverage for discharges from operations defined as concentrated animal feeding operations (CAFOs) in the State of Idaho, including Indian Country.

## **B. Facilities Covered**

CAFOs are point sources subject to the NPDES permitting program. A permit is required for any CAFO that discharges or proposes to discharge pollutants to waters of the U.S. See 40 CFR §§122.21(a) and 122.23(d)(1). A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. See 40 CFR 122.23(d)(1).

The Proposed permit provides coverage for any eligible facilities that discharge, or propose to discharge, and meet the following criteria;

- The facility meets the definition of a large, medium, or small CAFO defined in 40 CFR 122.23(b) ;
- Is subject to the effluent limitation guidelines (ELGs) found at 40 CFR 412; and
- Is located in the permit coverage area.

## **C. Eligibility for Coverage**

Eligible CAFOs may apply for authorization under the terms and conditions of the proposed permit by submitting a Notice of Intent (NOI) (see CAFO General Permit Appendix A – Form 2B). The specific requirements for the NOI are outlined in Part I.E of the proposed permit. As explained below, EPA will notify the CAFO when it has been granted permit coverage under this permit. Until EPA issues the notification, any discharges from the CAFO are not covered by a NPDES permit, unless the CAFO was previously covered under the administratively extended permit and submitted an NOI 180 days prior to the expiration date of that administratively extended permit.

CAFO owners and/or operators may also seek to be excluded from coverage under Proposed permit by submitting a notice of termination to EPA or by applying for an individual NPDES Permit in accordance with Part 1.F.

## **D. Limitations on Coverage**

In accordance with 40 CFR § 122.28(a)(4)(ii), EPA may exclude specific sources or areas from coverage under the proposed general permit. Part I.D of the proposed general permit describes CAFOs that are not eligible for coverage under the proposed permit. These CAFOs must apply for an individual permit if they need permit coverage. Parts I.D.1 and I.D.2 have been included in the permit in accordance with 40 CFR § 122.28(b)(3). Parts I.D.3 and I.D.4 add additional limitations on coverage for CAFOs that have the potential to adversely impact federally-listed endangered or threatened species (“listed”) under the Endangered Species Act (ESA) or historic properties under the National Historic Preservation Act (NHPA). Part I.D.5 is based on 40 CFR 122.4(i), which prohibits issuing a NPDES permit to new dischargers and new sources if it will cause or contribute to a water quality standards violation. In addition, in accordance with the draft Clean Water Act (CWA) Section 401 Water Quality Certification, EPA shall seek input from the appropriate DEQ regional office to determine if a new discharger or a new source proposing to discharge to an impaired water body will contribute to the existing impairment and whether additional limits or controls are necessary for the discharger to comply with the impaired waters and TMDL provisions specified in Idaho Water Quality Standards. Part I.D.6 has been included in the proposed permit to ensure compliance with the National Environmental Policy Act (NEPA).

## **E. Application for Coverage**

In accordance with 40 CFR §§ 122.21(i)(1)(x) , 122.28(b)(2), and 122.23(d)(3), operators of CAFOs seeking coverage under this general permit must submit a signed copy of NPDES Form 2B Application (see CAFO General Permit Appendix A) and a nutrient management plan (NMP) to EPA within 90 days of the effective date of this permit.

Pursuant to 40 CFR § 122.23(h), upon receipt, EPA will review the NOI and NMP to ensure that all permit requirements are fulfilled. EPA may request additional information from the CAFO owner or operator if additional information is necessary to complete the NOI and NMP or to clarify, modify, or supplement previously submitted material. If EPA makes a preliminary determination that the NOI is complete, the NOI, NMP, and draft terms of the NMP to be incorporated into the permit will be made available at EPA Region 10's website at (<http://yosemite.epa.gov/R10/water.nsf/NPDES+Permits/Permits+Homepage>) for a thirty (30) day public review and comment period. EPA will respond to comments received during this period and, if necessary, require the CAFO owner or operator to revise the NMP. If determined appropriate by EPA, CAFOs will be granted coverage under this general permit upon written notification by EPA. If EPA determines that the facility is ineligible for coverage under the general permit, the facility shall apply for an individual permit.

The method used in the current proposed permit for implementing NEPA and its implementing regulations at 40 CFR Part 6 is an added requirement from the expired permit. NEPA applies to "new sources." A CAFO is a "new source" if it commences construction after April 14, 2003 and meets the criteria set forth in 40 CFR 122.29. *See* 40 CFR 122.2 and 68 Fed. Reg. 7176, 7200 (February 12, 2003). With regard to existing CAFOs that propose to expand their facility, the facility would not become a new source unless the modifications totally replace the process or production equipment that causes the discharge of pollutants, or the new/modified facility's production and waste handling processes are substantially independent of the preexisting source. *See* 68 Fed. Reg. at 7200. New Source CAFOs in Idaho must submit a Finding of No Significant Impact ("FONSI") or an Environmental Impact Statement ("EIS") issued by EPA Region 10 along with a NOI in order to seek and obtain coverage under the proposed general permit.

For an existing CAFO, the proposed general permit adds a procedure to be used for permit coverage of a significant expansion that is constructed after the effective date of the permit. If EPA determines the expansion to be a New Source, then the permittee must include a FONSI or an EIS issued by Region 10 along with the NOI to have the expansion covered by the permit.

#### **F. Requiring an Individual Permit**

Pursuant to 40 CFR 122.28(b)(3), EPA may require any discharger applying for coverage under this general permit to apply for and obtain an individual permit. EPA will notify the operator, in writing, that an application for an individual permit is required and will set a time for submission of the application. Coverage of the facility under this general NPDES permit is automatically terminated when: (1) the operator fails to submit the required individual NPDES permit application within the defined time frame; or (2) the individual NPDES permit is issued by EPA.

Pursuant to 40 CFR 122.28(b)(3)(G)(iii), any operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The operator shall submit an application, with reasons supporting the request, to EPA no later than 90 days after the publication by EPA of the general permit in the Federal Register. This application shall include NPDES permit application Forms 1 and 2C, together with the same information required for the NOI.

#### **G. Permit Expiration**

In accordance with 40 CFR Part 122.46(a), this permit has a term of five years from the effective date. If a permittee has received authorization to discharge under the general permit and submits a NOI at least 180 days prior to the expiration date of the permit, the permit will be administratively extended for that permittee and will remain in full force and effect until a new permit is issued. *See* 40 CFR 122.6.

## **H. Change in Ownership**

If there is a change of ownership occurs at a CAFO whose discharge is authorized under the proposed permit, the permittee shall submit a notice of termination to EPA. If the new owner/operator seeks coverage under the proposed permit, the new owner/operator shall complete and submit an NOI to EPA in accordance with Part I.E. If the new owner/operator proposes to modify any part of the CAFO's existing NMP, the NMP shall be submitted to EPA in accordance with Part I.E of the proposed permit and will be subject to EPA review and the public comment procedures described in Part I.E.7. If the new owner/operator does not propose to modify any part of the CAFO's existing NMP, the new owner/operator must submit a signed statement, described in Part I.H of the proposed permit, and EPA will notify the new owner/operator if a change in ownership without NMP review will be granted.

## **I. Termination of Permit Coverage**

In accordance with 40 CFR Part 122.64, EPA may terminate coverage under the proposed permit, or deny a renewal of coverage under the proposed permit, for the following reasons:

- Noncompliance by the permittee with any condition of the permit;
- The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

The permittee may also request termination of coverage under the proposed permit in accordance with 40 CFR 122.64 and 122.22(d). The request must include a certification that the permittee is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. Prior to granting termination of permit coverage under the proposed permit, EPA must determine in writing that:

- The facility has ceased all operations and all waste retention structures have been properly closed in accordance with the April, 2006 NRCS Conservation Practice Standard No. 360; and
- The facility is no longer a CAFO that discharges or proposes to discharge manure, litter, or process waste water to waters of the United States; and
- In accordance with 40 CFR 122.64, the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (POTW).

Termination of permit coverage under the proposed permit will become effective 30 days after the permittee receives written notification from EPA.

## **II. RATIONALE FOR EFFLUENT LIMITATIONS AND STANDARDS**

### **A. Effluent Limitations and Standards Applicable to the Production Area**

Section 301(a) of the CWA, 33 USC § 1311(a), prohibits the discharge of pollutants by any point source into waters of the U.S. except in accordance with a permit. CWA Section 402, 33 USC § 1342, authorizes EPA to issue NPDES permits authorizing discharges subject to limitations and requirements imposed pursuant to Sections 101, 301(b), 304, 308, 401, and 403 of the CWA, 33 USC §§ 1251, 1311(b), 1314, 1318, 1341, and 1343. Pursuant to these statutory provisions, EPA is required to include conditions in a permit that meet technology-

based effluent limitation guidelines (ELGs) as well as any more stringent requirement necessary to meet EPA-approved state water quality standards. Moreover, NPDES permits generally contain reporting and information-gathering requirements pursuant to CWA Section 308, 33 USC § 1318.

Manure, litter, and/or process wastewater discharges resulting from CAFOs are subject to the ELGs found at 40 CFR Part 412. Pursuant to Clean Water Act Section 402(a)(2), 33 USC § 1342(a)(2), and 40 CFR 122.44(k)(3), best management practices (BMPs) are being proposed in the proposed permit. These practices are reasonably necessary either to achieve effluent limitations or to carry out the Act's goals of eliminating the discharge of pollutants as much as practicable and to maintain water quality. Because there is very little data available to conduct a reasonable potential analysis, numeric effluent limitations are infeasible at this time. Other limitations applicable to the production area (Parts II.A.3.h-k and Parts II.A.4) are based on the best professional judgment (BPJ), where national ELGs that apply to the appropriate category, or to the particular process involved, have not been issued by EPA

#### 1. Technology-based Effluent Limitations and Standards – Production Area

The proposed permit has been developed to fulfill the NPDES general permit requirements in accordance with 40 CFR 122.42(e)(1)(i), 412.31, and 412.43. For CAFO production areas, the ELGs prohibit the discharge of manure, litter or process wastewater pollutants into waters of the U.S. However, there are several exceptions to this general prohibition: (1) whenever precipitation causes an overflow of manure, litter or process wastewater, pollutants may be discharged provided that the production area is designed, constructed, operated and maintained to contain all manure, litter and process wastewater including the runoff and direct precipitation from a 25-year, 24-hour rainfall event and the CAFO complies with all the additional measures and records required by the ELGs; or (2) the CAFO may request the Director to establish NPDES permit effluent limitation based upon site-specific technologies (this option would likely require an individual permit).

To comply with this ELG, the proposed permit requires the CAFO to comply with certain design storage requirements. Specifically, the design storage volume must reflect manure, wastewater, and other wastes accumulated during the storage period; normal precipitation less evaporation on the surface area during the entire storage period; normal runoff from the facility's drainage area during the storage period; 25-year, 24-hour precipitation on the surface (at the required design storage volume level) of the facility; 25-year, 24-hour runoff from the facility's drainage area; residual solids after liquids have been removed; necessary freeboard; and, in the case of treatment lagoons, a minimum treatment volume necessary to allow anaerobic treatment to occur. The minimum design storage requirements in Part II.A.1 is based on EPA's CAFO technical guidance document "Managing Manure Nutrients at Concentrated Animal Feeding Operations" August 2004, Chapter 2, Section B.1.

#### 2. The additional measures and records

The production area of the CAFO must fulfill the requirements of Part II.A.2 of the proposed permit and 40 CFR 412.37 and 40 CFR 412.47. These additional measures and records are required to document that a valid discharge has occurred pursuant to 40 CFR 312.31(a)

#### 3. Additional Requirements

Manure, litter, and/or process wastewater discharges resulting from CAFOs are subject to the ELGs found at 40 CFR Part 412.

- a. This section of the proposed permit includes additional requirements that are applicable to the production area of the CAFO.
  - i. Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structures. [40 CFR 412.37(a)(1)(i)]
  - ii. Daily inspections of all water lines, including drinking water and cooling water lines. [40 CFR 412.37(a)(1)(ii)]
  - iii. Installation of a depth marker in all open surface liquid impoundments which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event. [40 CFR 412.37(a)(2)]
  - iv. Weekly inspections of the manure, litter, and process wastewater impoundments noting the level as indicated by the depth marker installed in accordance with 40 CFR 412.37(a)(2). [40 CFR 412.37(a)(1)(iii)]
  - v. Correction of any deficiencies that are identified as a result of visual inspections as soon as possible. [40 CFR 412.37(a)(3)]
  - vi. No disposal of animal mortalities in any liquid manure or process wastewater systems and handling of animal mortalities in such a way as to prevent discharge of pollutants to surface water. EPA has determined that the disposal of animal mortalities in accordance with the August, 2006 Idaho Natural Resource Conservation Service, Conservation Practice Standard Code 316 (see CAFO General Permit Appendix B) constitutes the appropriate technology standards. [40 CFR 412.37(a)(4)]
  - vii. Maintenance of complete records for the production area, in accordance with 40 CFR 412.37(b). Records must be maintained on-site at the permitted CAFO for five years from the date they are created and must include the records identified in the Operation and Maintenance section of Table IV-A of the proposed permit.
  - viii. CAFOs designing and/or constructing new wastewater retention facilities or modifying existing facilities must construct to be, at a minimum, in accordance with Natural Resource Conservation Service (NRCS) technical standards so as to ensure that the design, construction, and maintenance of the wastewater retention facilities will be sufficient to prevent any discharges to waters of the United States that are not in compliance with the proposed permit. Additionally, this will allow EPA to determine if the wastewater retention facility is adequately designed to contain the required 25-year, 24-hour event. [BPJ]
  - ix. A rain gauge kept onsite will reflect the actual rainfall or precipitation at the CAFO. Often, the nearest weather which the CAFO may use for precipitation measurements might not accurately reflect the actual rainfall at the CAFO. [BPJ]
  - x. The isolation of open lots and associated wastes from run-on from outside surface drainage by ditches, dikes, berms, terraces, or other structures would prevent any unplanned large volume of run-on water to have to be retained which, could lead to frequent instances of non-compliance. [BPJ]

- xi. The expansion of facilities, either in size or the number of animals, must take into account the effect the expansion will have on the waste handling procedures and structures. The amendment or enlarging of waste handling procedures and structures to accommodate any additional wastes that will be generated by the expansion will insure that the waste handling procedures and structures will be sufficient to prevent any discharges to waters of the United States that are not in compliance with the proposed permit. [BPJ]

#### 4. Other Requirements/Prohibitions Applicable to Production Areas

The permittee is prohibited from discharging any wastes to wastewater retention facilities which are not a product of the proper operation and maintenance of the CAFO. This will prohibit the CAFO from accepting outside wastes or the dumping of other potentially hazardous materials into the wastewater retention system which, is necessary because any materials introduced into the wastewater retention system has the potential to be discharged to waters of the United States as provided Part II.A.1 of the proposed permit.

In accordance with 40 CFR 122.42(e)(1)(iv), CAFOs must implement a NMP that prevents direct contact of confined animals with waters of the United States. The definition of process wastewater includes direct contact swimming and CAFOs may only discharge process wastewater in accordance with Part II.A.1 of the proposed permit.

Pursuant to 40 CFR § 122.23(b)(8), manure, litter, or feed storage piles are included in the definition of production area and CAFOs may not discharge of manure, litter, or process wastewater pollutants into waters of the United States from the production area except in accordance with Part II.A.1 of the proposed permit.

The Clean Water Act gives EPA broad authority to develop permit conditions necessary to meet effluent guidelines and water quality standards. Over much of Idaho, surface water flow is sustained by ground water inflow. As a result, pollutants which leak from wastewater retention facilities to the ground water will typically move underground toward local streams and rivers where the pollutants will be discharged and affect water quality. The Clean Water Act specifically refers to ground water in three sections, however it does not give EPA clear authority to regulate ground water quality through a NPDES permit. EPA Region 10 has not included requirements to specifically protect ground water quality. However, the proposed permit does protect the sources of surface water from the potential leakage of pollutants from retention structures. These prohibitions, along with the requirements for proper waste handling and disposal will have the added environmental benefit of providing some ground water protection. The proposed permit also includes provisions which relate to the protection of public health from the contamination of drinking water.

#### 5. Water Quality-based Effluent Limitations and Standards – Production Area

Federal regulations [40 CFR 122.44(d)] require permit limitations to control all pollutants which may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard. A state-wide general permit must assure that water quality standards will not be violated by authorized discharges from any facility covered by that permit, including CAFOs. A general permit writer's water quality-based requirements must be sufficiently protective to ensure that no authorized discharges will violate State water quality standards. EPA may impose additional water quality-based limitations on a site-specific basis, or require the facility to obtain coverage under an individual permit,

if information in a facility's NOI, required reports, or other sources indicates that the facility's discharges are not controlled as necessary to meet applicable water quality standards.

In those cases where technology-based effluent limitations are not sufficient to meet water quality standards, the permitting authority must develop more stringent water quality-based effluent limitations on a site-specific basis. NPDES permits for CAFOs may include BMPs as water quality-based effluent limitations where numeric limits are infeasible or where the use of BMPs is reasonably necessary to meet water quality-based effluent limitations [40 CFR 122.44(k)(3) and (4)].

CAFOs that discharge or propose to discharge to an impaired water will be informed by EPA if any additional limits or controls are necessary to protect water quality. For impaired waters with an EPA approved or established TMDL, additional requirements will be consistent with the assumptions of any available wasteload allocation in the TMDL. For impaired waters without an EPA approved or established TMDL, additional requirements will be consistent with water quality standards. Coverage under an individual permit may be required in accordance with Part I.D.1 of the proposed permit. Any additional limits or control measures shall be included in the NMP.

CAFOs that discharge or propose to discharge to an impaired water must implement and maintain any control measures or conditions on their site that enabled the CAFO to become eligible for coverage under Part I.D.5 of the proposed permit, and shall include these control measures or conditions in its NMP.

If at any time the facility becomes aware, or EPA determines, that any discharge causes or contributes to an exceedance of applicable water quality standards, the facility must take corrective action as required in Part II.A.5 of the proposed permit.

6. Antidegradation Requirements for New or Increased Discharges

The permittee is not authorized to discharge manure, litter, or process wastewater that does not comply with Idaho's anti-degradation policy for water quality standards. Idaho's anti-degradation policy, IDAPA 58.01.02.051, can be obtained from the IDEQ at the address listed in Part I.E.6.

**B. Effluent Limitations and Standards Applicable to the Land Application Area**

1. Technology-based Effluent Limitations and Standards – Land Application Area

The CAFO must develop and implement a nutrient management plan. [40 CFR 412.4(c)(1)]

This section is based upon the following regulatory requirements:

- a. Develop and implement a nutrient management plan that is based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field. [40 CFR 412.4(c)(1)]
- b. Address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters. [40 CFR 412.4(c)(1)]
- c. Determine application rates for manure, litter, and process wastewater that minimize phosphorus and nitrogen transport from the field to surface waters in accordance with the June, 2007 Idaho NRCS Conservation Practice Standard Code 590 (Nutrient Management), which is the technical standard for nutrient management as established by EPA. [40 CFR 412.4(c)(2)]

- d. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States [40 CFR 122.42(e)(1)(vi)]
- e. Establishment of protocols to land apply manure, litter, and process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater. [40 CFR 122.42(e)(1)(vii)]
- f. Analyze manure a minimum of once annually for nitrogen and phosphorus content. In accordance with the draft CWA Section 401 Water Quality certification, soil must be analyzed annually for phosphorus content. [40 CFR 412.4(c)(3)]
- g. Periodically inspect for leaks equipment used for land application of manure, litter, or process wastewater. [40 CFR 412.4(c)(4)]
- h. Do not apply manure, litter, or process wastewater closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters. As a compliance alternative, the permittee may demonstrate to the permitting authority that the use of an alternative practice will result in equivalent or better pollutant reductions than would be achieved by the use of the 100- foot setback.. [40 CFR 412.4(c)(5) and 40 CFR 412.4(c)(5)(i)]
- i. Complete on-site records including the site specific NMP must be maintained to document implementation of all required land application practices. [40 CFR 412.37(b)]

2. Additional BMPs to control discharges from land application areas

The management of irrigations systems and the identification of areas, due to topography, activities or other factors that have a high potential for significant soil erosion, requires CAFO owners and/or operators to address areas and management practices identified as having a high potential for runoff contamination. CAFO owners and/or operators must have an accurate understanding of the pollution potential of the facility and the proposed permit requires CAFO owners and/or operators to identify areas and activities which may be significant pollutant sources or and practices sufficient to prevent any discharges to waters of the United States that are not in compliance with the proposed permit. [BPJ]

3. Prohibitions

There shall be no discharge of manure, litter or process wastewater to a water of the United States from a CAFO as a result of the application of manure, litter or process wastewater to land areas under the control of the CAFO, except where it is an agricultural storm water discharge. [40 CFR 122.23(e)]

The application of wastes shall not occur during precipitation events or when the ground is saturated with water. The winter application of solid wastes may only occur in accordance with the June, 2007 Idaho NRCS, Conservation Practice Standard Code 590 (see CAFO General Permit Appendix C).

I

4. Water Quality-Based Effluent Limitations

Discharges from CAFO land application area, except where it is an agricultural storm water discharge, are subject to NPDES requirements, including water quality-based effluent limitations. Federal regulations

[40 CFR 122.44(d)] require permit limitations to control all pollutants which may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above and State or Tribal water quality standard. In most instances, a CAFO that meets technology-based permit limits requiring manure to be applied at appropriate agronomic rates will eliminate all or most dry weather discharges. However, if such discharges remain, the Permitting Authority must determine the need for additional water quality-based effluent limitations to meet applicable water quality standards based on the circumstances of each particular case (see the Preamble to the Final Rule, 73 FR 70,418 (November 20, 2008)). A state-wide general permit must ensure that water quality standards will not be violated by authorized discharges from any facility covered by that permit, including CAFOs located on small upstream tributaries. A general permit's water quality-based requirements must, therefore, be sufficiently protective to ensure that no authorized discharges anywhere in the State will violate water quality standards (see Water Quality-based Effluent Limitations and Standards – Production Area, above).

EPA has determined that water quality-based effluent limitations are necessary to address dry weather discharges from land application areas that cause or contribute to an excursion above Idaho Water Quality Standards. The proposed permit prohibits all dry weather discharge from the land application area. This includes, but is not limited to, the dry weather discharge of irrigation water not associated with nutrient application on fields where manure was previously applied.

### **C. Other Limitations**

EPA can use BPJ to develop special permit conditions to address specific discharges at CAFOs that are not addressed in the ELGs, such as wash down of equipment that has been in contact with manure, discharges of fuel, and pollutants (i.e. manure, feathers, and feed) which have fallen to the ground immediately downwind from confinement building exhaust ducts and ventilation fans and are carried by storm water runoff to waters of the United States (see Section 4.1.1 of EPA's December 31, 2003, NPDES Permit Writers Guidance Manual and Example NPDES Permit for CAFOs).

Discharges from CAFOs, including process wastewater discharges from outside the production area, non-process wastewater discharges, and storm water discharges not addressed under the ELG, except where they are considered an agricultural storm water discharge, are subject to NPDES requirements, including water quality-based effluent limitations. EPA has determined that water quality-based effluent limitations are necessary to address the following discharges that may cause or contribute to an excursion above Idaho Water Quality Standards.

Process wastewater discharges from outside the production area, including: wash down of equipment that has been in contact with manure, raw materials, products or byproducts that occurs outside of the production area; runoff of pollutants from raw materials, products or byproducts (such as manure, feathers, litter, bedding and feed) from the CAFO that have been spilled or otherwise deposited outside the production area that have the potential to discharge to, or contribute pollutants to waters of the United States, shall be identified in the NMP. The NMP must identify measures to address process waste water discharges from outside the production area in order to meet applicable Idaho water quality standards.

Wastewater discharges that do not meet the definition of process wastewater, including: discharges associated with feed, fuel, chemical, or oil spills, equipment repair, and equipment cleaning where the equipment has not been in contact with manure, raw materials, products or byproducts; domestic wastewater discharges that have the potential to discharge to, or contribute pollutants to waters of the United States, shall be identified in the NMP. The NMP must identify measures to address wastewater discharges that do not meet the definition of process wastewater in order to meet applicable water quality standards.

Storm water discharges that are not addressed under the effluent limitations in Section II above remain subject to applicable industrial or construction storm water discharge requirements. Such storm water discharges excludes process wastewater, discharges that qualify as agricultural stormwater, and discharges from construction activities that disturb less than one acre of land. Storm water discharges from construction activities that disturb one or more acre of land are required to obtain coverage under EPA's Construction General Permit and certain industrial activities such as material handling and storage, equipment maintenance and cleaning, or other industrial processing or operations may have to obtain coverage under EPA's Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP).

### **III. SPECIAL CONDITIONS**

#### **A. Nutrient Management Plan (NMP)**

##### **1. Schedule.**

CAFOs seeking permit coverage under the proposed permit must submit the completed NMP to the EPA with the NOI. The permittee shall implement its NMP upon authorization under the proposed permit. [40 CFR 122.23(h)]

##### **2. NMP Review and Terms**

Each permittee must develop, submit with its NOI, and upon authorization implement a site specific Nutrient Management Plan (NMP). The NMP must specifically identify and describe the practices that will be implemented to assure compliance with the effluent limitations and special conditions in proposed permit. The NMP must be developed in accordance with the June, 2007 Idaho NRCS Conservation Practice Standard Code 590 (Nutrient Management). As provided in 40 CFR 123.36, these technical standards must be consistent with 40 CFR 412.4(c)(2), which in part provides that such standards must operate to minimize the transport of nutrients to surface waters. The NMP accomplishes this primarily by restricting the quantity of nutrients that can be land applied and matching that quantity with the nutrient needs of the crops being grown on the fields used for such land application. [40 CFR 122.23(h)]

Upon receipt of the NMP, EPA will review the NMP. EPA can request additional information if needed. EPA will use the NMP to identify site-specific permit terms, which must be incorporated as terms and conditions of the proposed permit pursuant to 40 CFR 122.23(h)(1).

Once the NOI and NMP are complete and have been reviewed by EPA, EPA will notify the public of his or her proposal to grant coverage under the proposed permit and make available for public review and comment by publishing the notice of intent submitted by the CAFO, including the CAFO's NMP, and the terms of the NMP identified by EPA, on the EPA Region 10 Office of Water and Watershed internet site at (<http://yosemite.epa.gov/R10/water.nsf/NPDES+Permits/Permits+Homepage>). The notice will also provide the opportunity for the request for a public hearing on the NOI and the proposed terms of the NMP to be incorporated in the permit in accordance with 40 CFR 124.11 and 12. The public will be provided 30 days to comment and request a hearing on the proposed terms of the NMP to be incorporated into the permit. EPA will respond to significant comments and can revise the NMP or terms of the permit if necessary. [40 CFR 122.23(h)]

EPA will notify the CAFO owner or operator that coverage under the proposed permit has been authorized. The coverage letter will identify the provisions of the NMP that are to be incorporated into the permit. These site specific permit terms will be provided to the permittee in a written permit authorization notice. When EPA authorizes the CAFO owner or operator to discharge under the proposed

permit, the terms of the NMP must be incorporated as terms and conditions of the permit for the CAFO. [40 CFR 122.23(h)]

### 3. NMP Content

The proposed permit specifies that each NMP must, at a minimum, include practices and procedures necessary to implement the applicable effluent limitations and standards. In addition, each NMP must meet nine minimum measures required under 40 CFR 122.42(e)(1)(i-ix), and specified in the proposed permit. These requirements include the following:

- a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities. [40 CFR 122.42(e)(1)(i)]
- b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities. [40 CFR 122.42(e)(1)(ii)]
- c. Ensure that clean water is diverted, as appropriate, from the production area. [40 CFR 122.42(e)(1)(iii)]
- d. Prevent the direct contact of animals confined or stabled at the facility with waters of the United States. [40 CFR 122.23(1)(iv)]
- e. Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals or contaminants. [40 CFR 122.23(1)(v)]
- f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States and specifically, to minimize the runoff of nitrogen and phosphorus. [40 CFR 122.23(1)(vi)]
- g. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil. [40 CFR 122.23(1)(vii)]
- h. Establish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater. [40 CFR 122.23(1)(viii)]

Application rates may be expressed in NMPs consistent with one of the two approaches described in (i) and (ii) below:

#### i. Linear Approach.

The Linear Approach expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

- (A) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to EPA, in pounds per acre, per year, for each field to be used for land application,

and certain factors necessary to determine such rates. At a minimum, the factors that are terms must include:

- the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field,
- the crops to be planted in each field or any other uses of a field such as a pasture or fallow fields;
- the realistic yield goal for each crop or use identified for each field;
- the nitrogen and phosphorus recommendation from EPA approved sources specified below for each crop or use identified for each field,
- credits for all nitrogen in the field that will be plant available;
- consideration of multi-year phosphorus application;
- accounting for all other additions of plant available nitrogen and phosphorus to the field;
- the form and source of manure, litter, and process wastewater to be land-applied;
- the timing and method of land application; and,
- the methodology by which the NMP accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

EPA approved sources for nitrogen and phosphorus crop recommendations include the Idaho NRCS, University of Idaho, or an equivalent source. If a CAFO chooses to use a source other than the Idaho NRCS or University of Idaho, EPA will evaluate that source for nitrogen and phosphorus crop recommendations during the NMP review period.

- (B) Large CAFOs that use this approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application. [40 CFR 122.42(e)(5)(i)]

ii Narrative Rate Approach.

The Narrative Rate Approach expresses rates of application as a narrative rate, prescribing how to calculate the amount of manure, litter, and process wastewater allowed to be applied. The Narrative Rate Approach results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied according to the following specifications:

- (A) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the NMP, in chemical forms determined to be acceptable to EPA, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms must include:
- the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field;

- the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with paragraph (ii)(B) of this section);
- the realistic yield goal for each crop or use identified for each field,
- the nitrogen and phosphorus recommendations from EPA approved sources specified below for each crop or use identified for each field; and,
- the methodology by which the NMP accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan, credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field, the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

EPA approved sources for nitrogen and phosphorus crop recommendations include the Idaho NRCS, University of Idaho, or an equivalent source. If a CAFO chooses to use a source other than the Idaho NRCS or University of Idaho, EPA will evaluate that source for nitrogen and phosphorus crop recommendations during the NMP review period.

- (B) The terms of the NMP include alternative crops identified in the CAFO's NMP that are not in the planned rotation. Where a CAFO includes alternative crops in its NMP, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field and the nutrient management plan must include realistic crop yield goals and the nitrogen and phosphorus recommendations from the Idaho NRCS, University of Idaho, or an equivalent source. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied must be determined in accordance with the methodology described in (ii)(A) of this section.
- (C) For CAFOs using this approach the following projections must be included in the NMP submitted to EPA, but are not terms of the NMP: the CAFO's planned crop rotations for each field for the period of permit coverage, the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application: accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the NMP.
- (D) CAFOs that use this approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in paragraph (ii)(A) of this section before land applying manure, litter, and process wastewater and must rely on the following data:

- A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required in paragraph (ii)(A) of this section, and for phosphorus, the result of the most recent soil test conducted in accordance with soil testing requirements required in Part III.A.7.h of the proposed permit; and
  - The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied. [40 CFR 122.42(e)(5)(ii)]
- iii. Identify and maintain all records necessary to document the development and implementation of the NMP and compliance with the proposed permit. [40 CFR 122.42(e)(5) (ix)]
4. Signature. The NMP shall be signed by the owner/operator or other signatory authority in accordance with Part V.C.5 (Signatory Requirements) of the proposed permit. [40 CFR 122.41(k)]
5. A current copy of the NMP shall be kept on-site at the permitted facility in accordance with Part III.A.5 of the proposed permit and provided to the permitting authority upon request. [40 CFR 412.37(c)]
6. Changes to the NMP
- a. The proposed permit recognizes that a CAFO owner or operator may need to make changes to its NMP. When a CAFO owner or operator covered by the proposed permit makes changes to the CAFO's NMP previously submitted to EPA, the CAFO owner or operator must provide EPA with the most current version of the CAFO's NMP and identify changes from the previous version. [40 CFR 122.42(e)(6)(i)]
- b. EPA will review the revised NMP. If EPA determines that the changes to the NMP require revision of the terms of the NMP incorporated into the permit issued to the CAFO, EPA must then determine whether such changes are substantial. [40 CFR 122.42(e)(6)(ii)] Substantial changes to the terms of a NMP incorporated as terms and conditions of a permit include, but are not limited to: [40 CFR 122.42(e)(6)(iii)]
- i. Addition of new land application areas not previously included in the CAFO's NMP, except that if the added land application area is covered by the terms of a NMP incorporated into an existing NPDES permit and the permittee complies with such terms when applying manure, litter, and process wastewater to the added land; [40 CFR 122.42(e)(6)(iii)(A)]
- ii. For NMPs using the Linear Approach, changes to the field-specific maximum annual rates of land application (pounds of N and P from manure, litter, and process wastewater).

- iii. For NMPs using the Narrative Rate Approach, changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop; [40 CFR 122.42(e)(6)(iii)(B)]
  - iv. Addition of any crop or other uses not included in the terms of the CAFO's NMP and corresponding field-specific rates of application; and [40 CFR 122.42(e)(6)(iii)(C)]
  - v. Changes to site specific components of the CAFO's NMP, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the U.S. [40 CFR 122.42(e)(6)(iii)(D)]
- c. If the changes to the terms of the NMP are not substantial, EPA will include the revised NMP in the permit record, revise the terms of the permit based on the site specific NMP, and notify the permittee and the public of any changes to the terms of the permit based on revisions to the NMP. [40 CFR 122.42(e)(6)(ii)(A)]
  - d. If EPA determines that the changes to the terms of the NMP are substantial, EPA will notify the public, make the proposed changes and make the information submitted by the CAFO owner or operator available for public review and comment, and respond to all significant comments received during the comment period. The process for public comments, hearing requests and the hearing process if a hearing is held will follow the procedures set forth in 40 CFR 124.11 through 124.13. EPA may require the permittee to further revise the NMP, if necessary. Once EPA incorporates the revised terms of the NMP into the permit, EPA will notify the permittee of the revised terms and conditions of the permit. [40 CFR 122.42(e)(6)(ii)(B)]
7. Requirements associated with NMP implementation
- a. Permittee must have adequate storage of manure, litter, and process wastewater. [40 CFR 122.42(e)(1)(i)]
  - b. Proper management of mortalities [40 CFR 122.42(e)(1)(ii)]
  - c. Clean water must be diverted. [40 CFR 122.42(e)(1)(iii)]
  - d. Direct contact of confined animals with waters of the United States is prohibited. [40 CFR 122.42(e)(1)(iv)]
  - e. Chemicals and other contaminants handled on-site may not be disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants. [40 CFR 122.42(e)(1)(v)]
  - f. Implement site appropriate site specific conservation practices. [40 CFR 122.42(e)(1)(vi)]
  - g. Manure, litter and process wastewater testing. [40 CFR 122.42(e)(1)(vii)]
  - h. Soil testing. [40 CFR 122.42(e)(1)(viii)]
  - i. Land application of manure, litter, or process waste water in accordance with the CAFOs site specific NMP. [40 CFR 122.42(e)(1)(ix)]

- j. Maintenance of site specific records to document the implementation and management of the NMP. [40 CFR 122.42(e)(1)(ix)]
  - k. CAFOs using the Narrative Approach. [40 CFR 122.42(e)(5)(D)]
8. Certified Specialists

Owners/operators of CAFOs shall use a certified specialist to develop, modify, review, and/or approve the NMP required by the proposed permit. This permit condition is consistent with similar state of Idaho NMP requirements. A certified specialist is an individual who has demonstrated the capacity to develop Comprehensive Nutrient Management Plans (CNMPs) or NMPs in accordance with applicable USDA-NRCS standards, State standards, and when applicable, meets EPA CAFO effluent guidelines, NMP requirements, and NPDES permit requirements. The certified specialist must be certified by the Idaho USDA-NRCS, the Idaho State Department of Agriculture, or an equivalent certification program sanctioned by USDA-NRCS. The CAFO owner/operator remains solely responsible for assuring the NMP is properly implemented and complies with all applicable permit requirements.

## **B. Facility Closure**

Abandoned or improperly closed CAFOs pose a pollution threat to surface water and groundwater that can be significant for large facilities and increases due to a lack of proper maintenance and management.

The proposed permit includes specific closure requirements for lagoons and other surface impoundments, as well as for other manure, litter and process wastewater storage and handling facilities. Under the proposed permit, no such facilities may be abandoned and each must be properly closed as promptly as practicable upon ceasing operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of twelve consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either: (1) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or (2) removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. In either case, the permittee must notify EPA of the action taken, and must conduct routine inspections, maintenance, and record keeping as though the structure were in use. Prior to restoration of use of the structure, the permittee shall notify EPA and provide the opportunity for inspection.

All closure of lagoons and other earthen or synthetic lined basins must be consistent with Idaho Natural Resource Conservation Service Practice Standard Code 360 (Closure of Waste Impoundments). Consistent with this standard the permittee must remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittee's nutrient management plan, unless otherwise authorized by EPA.

Closure of all other manure, litter, or process wastewater storage and handling structures must occur as promptly as practicable after the permittee has ceased to operate, or, if the permittee has not ceased to operate, within 12 months after the date on which the use of the structure ceased. To close a manure, litter, or process wastewater storage and handling structure, the permittee must remove all manure, litter, or process wastewater and dispose of it in accordance with the permittee's nutrient management plan, or document its transfer from the permitted facility in accordance with off-site transfer requirements specified in Part III.C of the proposed permit, unless otherwise authorized by EPA. [40 CFR 122.23(h)]

## **C. Requirements for the Transfer of Manure, Litter, and Process Wastewater to Other Persons**

1. Under the proposed permit, where CAFO-generated manure, litter, or process wastewater is sold or given away the permittee must comply with specific requirements that document the transaction and promote proper management. These include the following conditions:
  - a. The permittee must maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted operation;
  - b. The permittee must maintain records of the name and address of the recipient;
  - c. The permittee must provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater; and
  - d. These records must be retained on-site, for a period of five years, and be submitted to the permitting authority upon request. [122.42(e)(3)]

The proposed permit does not establish requirements for off-site management of CAFO generated manure, litter, or process wastewater. However, EPA can use the documentation specified above to ensure proper management of such materials as appropriate.

#### **D. Additional Special Conditions**

As previously explained in this fact sheet, over much of Idaho, surface water flow is sustained by ground water inflow. As a result, pollutants which leak from wastewater retention facilities to the ground water will typically move underground toward local streams and rivers where the pollutants will be discharged and affect water quality. The permittee must have onsite documentation that no hydrologic connection exists between the contained wastewater and waters of the United States. The permittee is given two options to demonstrate the lack of hydrologic connection. First the permittee may document that there can be no significant flow from the retention structure or second, the permittee may document that leakage from the retention structure would not migrate to waters of the United States. The two options allow the permittee to take into account the natural situation beneath the retention structure, such as, the natural materials or isolated ground waters. In addition, the permittee should be aware that man made connections from ground waters to surface waters via wells and irrigation must be taken into account when determining hydrologic connections. When the permittee can not document that no hydrologic connection exists, the containment structure must have a liner which will prevent the potential contamination of surface waters. Liners for retention structures should be constructed and maintained in accordance with NRCS specifications and any mechanical or structural damage to the liner must be evaluated by a Professional engineer within thirty (30) days of the damage. Although the liner requirement is to protect surface waters, the permittee is strongly encouraged to provide a liner for any containment structures to comply with any existing tribal, state, or local regulations for ground water protection.

The ELG regulations require weekly inspections be conducted of all manure, litter, and process wastewater retention facilities and a weekly log ensures that the wastewater retention structures are inspected and documented. A schedule for liquid waste removal from wastewater retention structures and a log indicating weekly inspections of the wastewater retention structures are important requirements for operating and maintaining wastewater retention facilities to ensure that those facilities do not overflow or discharge and that the manure and wastewater is properly utilized. The dewatering or removal of manure from wastewater retention facilities is a critical activity in preventing discharges to waters of the United States.

A select few CAFOs may be subject to additional requirements from other CWA regulatory programs and proper measures should be taken to ensure compliance with any applicable CWA requirements. For example, CAFOs

may be subject to section 311 of the CWA, which address spills or pollution from oil and other hazardous substances.

EPA has determined that an employee training program is necessary to inform personnel at all levels of responsibility of the requirements of the proposed permit and the information pertinent to the proper operation and maintenance of the CAFO and waste disposal.

#### IV. INSPECTION, MONITORING, RECORDKEEPING, AND REPORTING

##### A. Inspection, Monitoring, and Recordkeeping

Under the proposed permit, the permittee shall inspect, monitor, and record the results of such inspection and monitoring in accordance with Table IV–A:

<b>Table IV-A NPDES CAFO Permit Record Keeping Requirements</b>		
<b>Parameter</b>	<b>Units</b>	<b>Frequency</b>
<b>Permit and NMP</b> <i>(Note: Required by the NPDES CAFO Regulation – applicable to all CAFOs)</i>		
The CAFO must maintain on-site a copy of the current NPDES permit, including the permit authorization notice.	N/A	Maintain at all times
The CAFO must maintain on-site a current site specific NMP that reflects existing operational characteristics. The operation must also maintain on-site all necessary records to document that the NMP is being properly implemented with respect to manure and wastewater generation, storage and handling, and land application. In addition records must be maintained that the development and implementation of the NMP is in accordance with the minimum practices defined in 40 CFR 122.42(e).	N/A	Maintain at all times
<b>Soil and Manure/Wastewater Nutrient Analysis</b> <i>(Note: Required by the CAFO ELG – applicable to Large CAFOs)</i>		
Analysis of manure, litter, and process wastewater to determine nitrogen and phosphorus content. <sup>1</sup>	ppm Pounds/ton	At least annually after initial sampling
Analysis of soil in all fields where land application activities are conducted to determine phosphorus content. <sup>1</sup>	ppm	At least once every 5 years after initial sampling
<b>Operation and Maintenance</b> <i>(Note: Required by the CAFO ELG – applicable to Large CAFOs)</i>		
Visual inspection of all water lines	N/A	Daily <sup>2</sup>
Documentation of depth of manure and process wastewater in all liquid impoundments	Feet	Weekly
Documentation of all corrective actions taken. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction.	N/A	As necessary
Documentation of animal mortality handling practices	N/A	As necessary
Design documentation for all manure, litter, and wastewater storage structures including the following information:		

<b>Table IV-A NPDES CAFO Permit Record Keeping Requirements</b>		
<b>Parameter</b>	<b>Units</b>	<b>Frequency</b>
<ul style="list-style-type: none"> <li>• Volume for solids accumulation</li> <li>• Design treatment volume</li> <li>• Total design storage volume<sup>3</sup></li> <li>• Days of storage capacity</li> </ul>	Cubic yards/gallons Cubic yards/gallons Cubic yards/gallons Days	Once in the permit term unless revised
Documentation of all overflows from all manure and wastewater storage structures including: <i>(Note: Required by the NPDES Regulation – applicable to all CAFOs)</i>		
<ul style="list-style-type: none"> <li>• Date and time of overflow</li> <li>• Estimated volume of overflow</li> <li>• Analysis of overflow (as required by the Permitting Authority)</li> </ul>	Month/day/year Total gallons ppm	Per event Per event Per event
<b>Land Application</b> <i>(Note: Required by the CAFO ELG – applicable to Large CAFOs)</i>		
For each application event where manure, litter, or process wastewater is applied, documentation of the following by field:		
<ul style="list-style-type: none"> <li>• Date of application</li> <li>• Method of application</li> <li>• Weather conditions at the time of application and for 24 hours prior to and following application</li> <li>• Total amount of nitrogen and phosphorus applied<sup>4</sup></li> </ul>	Month/day/year N/A N/A Pounds/acre	Daily Daily Daily Daily
Documentation of the crop and expected yield for each field	Bushel/acre	Seasonally
Documentation of the actual crop planted and actual yield for each field		
Documentation of test methods and sampling protocols used to sample and analyze manure, litter, and wastewater and soil.	N/A	Once in the permit term unless revised
Documentation of the basis for the application rates used for each field where manure, litter, or wastewater is applied.	N/A	Once in the permit term unless revised
Documentation showing the total nitrogen and phosphorus to be applied to each field including nutrients from the application of manure, litter, and wastewater and other sources	Pounds/acre	Once in the permit term unless revised
Documentation of manure application equipment inspection	N/A	Seasonally
<b>Manure Transfer</b> <i>(Note: Required by the NPDES CAFO Regulation – applicable to Large CAFOs)</i>		
For all manure transfers the CAFO must maintain the following records:		
<ul style="list-style-type: none"> <li>• Date of transfer</li> <li>• Name and address of recipient</li> <li>• Approximate amount of manure, litter, or wastewater transferred</li> </ul>	N/A N/A Tons/gallons	As necessary As necessary As necessary
<sup>1</sup> Refer to the state nutrient management technical standard for the specific analyses to be used. <sup>2</sup> Visual inspections should take place daily during the course of normal operations. The completion of such inspection should be documented in a manner appropriate to the operation. Some operations may wish to maintain a daily log. Other operations may choose to make a weekly entry, when they update other weekly records, that required daily inspections have been completed. <sup>3</sup> Total design volume includes normal precipitation less evaporation on the surface of the structure for the storage period, normal runoff from the production area for the storage period, 25-year, 24-hour precipitation on the surface of the structure, 25-year, 24-hour runoff from the production area, and residual solids. <sup>4</sup> Including quantity/volume of manure, litter, or process wastewater applied and the basis for the rate of phosphorus application.		

[40 CFR 122.42(e)(2) and (3); 40 CFR 412.37(b) and (c)]

**B. Notification of Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport and Application**

The proposed permit provides that in the event of an unauthorized discharge of pollutants to a water of the United States, the permittee is required to make immediate oral notification within 24-hours to the EPA Region 10, NPDES Compliance Unit, Office of Compliance and Enforcement, Seattle, WA at 206-553-1846 and notify EPA and the Idaho State Department of Agriculture (ISDA), and the appropriate DEQ regional office in writing within five (5) working days of the discharge from the facility. In addition, the permittee must keep a copy of the notification submitted to EPA and ISDA together with the other records required by the proposed permit. The discharge notification must include: 1) A description of the discharge and its cause, including a description of the flow path to the receiving water body and an estimate of the flow and volume discharged; and 2) The period of non-compliance, including exact dates and times, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent recurrence of the discharge. This reporting requirement is a standard permit condition under 40 CFR 122.41(l)(6). Note that runoff that meets the definition of agricultural stormwater does not constitute a point source discharge.

**C. Monitoring Requirements for All Discharges from Retention Structures**

The proposed permit provides that in the event of any overflow or other discharge of pollutants from a manure and/or wastewater storage or retention structure, whether or not authorized by the proposed permit, the discharge must be sampled and analyzed, and an estimate of the volume of the release and the date and time must be recorded. [40 CFR 122.41(j)]

Samples must, at a minimum, be analyzed for the following parameters: total nitrogen, nitrate nitrogen, ammonia nitrogen, total phosphorus, *E. coli*, five-day biochemical oxygen demand (BOD<sub>5</sub>), total suspended solids, pH, and temperature. The discharge must be analyzed in accordance with approved EPA methods for water analysis listed in 40 CFR Part 136. [40 CFR 122.41]

If conditions are not safe for sampling, the permittee must provide documentation of why samples could not be collected and analyzed. For example, the permittee may be unable to collect samples during dangerous weather conditions (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). However, once the dangerous condition has passed, the permittee shall collect a sample from the retention structure (pond or lagoon) from which the discharge occurred. [40 CFR 122.41]

**D. Spills/Releases in Excess of Reportable Quantities**

The proposed permit provides that the permittee notify the National Response Center and DEQ in the event of a release of a hazardous substance or oil in an amount equal or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117 or 40 CFR Part 302, occurs during a 24-hour period.

**E. Annual Reporting**

Under the proposed permit, the permittee must submit an annual report to EPA by March 1st of each year. The requirement and criteria for the annual report are specified in 40 CFR 122.42(e)(4).

The annual report must include the following information:

1. The number and type of animals, whether in open confinement or housed under roof;

2. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
3. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);
4. Total number of acres for land application covered by the NMP;
5. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;
6. Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume;
7. A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner;
8. Actual crops planted and actual yields for each field for the preceding 12 months;
9. Results of all samples of manure, litter or process wastewater for nitrogen and phosphorus content for manure, litter and process wastewater that was land applied;
10. Results of calculations conducted in accordance with Parts III.A.3.i.i (for the Linear Approach) and III.A.3.i.ii (for the Narrative Rate Approach);
11. Amount of manure, litter, and process wastewater applied to each field during the preceding 12 months, and;
12. For CAFOs using the Narrative Rate Approach to address rates of application:
  - a. The results of any soil testing for nitrogen and phosphorus conducted during the preceding 12 months.
  - b. The data used in calculations conducted in accordance with Part III.A.3.i.ii.
  - c. The amount of any supplemental fertilizer applied during the preceding 12 months.

## **V. STANDARD CONDITIONS**

The proposed permit for CAFOs incorporates the standard conditions applicable to all permits issued under the NPDES program. Because that language is a recitation of existing regulations, it is not open for comment and cannot be challenged in the context of this permitting action.

## **VI. OTHER REQUIREMENTS**

### **A. State Certification**

Section 401 of the Act, 33 USC 1341, requires EPA to seek a certification from the State that the conditions of the proposed permit are stringent enough to comply with State water quality standards.

**B. Endangered Species Act [16 U.S.C. 1531 et al.]**

Section 7 of the Endangered Species Act requires Federal agencies to consult with NOAA Fisheries and the U.S. Fish and Wildlife Service (USFWS) if their actions have the potential to either beneficially or adversely affect any threatened or endangered species. A biological evaluation (BE) was developed to address the potential impacts of issuing the proposed permit. The table below includes a summary of the determinations of No Effect (NE), Not Likely to Adversely Affect (NLAA), or Likely to Adversely Affect (LAA) for the listed endangered species.

**Summary of Effects Determinations**

Species	Effects Determinations		
	NE	NLAA	LAA
<b>Mammals</b>			
Canada Lynx	X		
Grizzly Bear	X		
Northern Idaho Ground Squirrel	X		
Selkirk Mountains Woodland Caribou	X		
<b>Fish</b>			
Bull Trout		X	
Chinook Salmon		X	
Sockeye Salmon		X	
Steelhead Trout		X	
White Sturgeon		X	
Species	Effects Determinations		
<b>Invertebrates</b>			
Banbury Springs Lanx		X	
Bliss Rapids Snail		X	
Bruneau Hot Springsnail		X	
Snake River Physa Snail		X	
Utah Valvata Snail		X	
<b>Plants</b>			
MacFarlane's Four-o'clock	X		
Spalding's catchfly	X		
Ute Ladies' Tresses		X	
Water Howellia		X	
<b>Candidate Species</b>			
Yellow-billed Cuckoo		X	
Southern Idaho Ground Squirrel	X		
Columbia Spotted Frog		X	
Christ's Paintbrush	X		
Slender Moonwort	X		

**C. Presidential Oversight of Federal Regulations [Executive Order 12866]**

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12866 providing for presidential oversight of the regulatory process pursuant to Section 6 of that order.

**D. Paperwork Reduction Act [44 U.S.C. 3501 et seq.]**

EPA has reviewed the requirements imposed on regulated facilities in the proposed permit under the Paperwork Reduction Act. Most of the information collection requirements have already been approved by the OMB in submissions made for the NPDES permit program and the previous general NPDES permit for CAFOs in Idaho.

**E. The Regulatory Flexibility Act [5 U.S.C. 553 et seq.]**

After review of the facts presented in the notice of intent, proposed permit and fact sheet, the Administrator of EPA certifies, pursuant to the provisions of 5 U.S.C. 605(b), that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the proposed permit reduces a significant administrative burden on regulated sources.

**VII. DEFINITIONS**

**Animal feeding operation (AFO)** means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period, and (ii) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

**Application** means the EPA standard national forms for seeking coverage under for an NPDES permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in “approved States,” including any approved modifications or revisions [e.g. for NPDES general permits, a written “notice of intent” pursuant to 40 CFR 122.28; for NPDES individual permits, Form 1 and 2B pursuant to 40 CFR 122.1(d)].

**Concentrated animal feeding operation (CAFO)** means an AFO which is defined as a Large CAFO or Medium CAFO by 40 CFR 122.23 (4) and (6), or that is designated as a CAFO.

**E. coli** means the bacterial count (Parameter 5) at 40 CFR 136.3 in Table 1A, which also cites the approved methods of analysis.

**Grab sample** means a sample which is taken from a waste stream on a one-time basis without consideration of the flow rate of the waste stream and without consideration of time.

**Land application** means the application of manure, litter, or process wastewater onto or incorporated into the soil.

**Land application area** means land under the control of a CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.

**Large CAFO** means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories: (i) 700 mature dairy cattle, whether milked or dry; (ii) 1,000 veal calves; (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (iv) 2,500 swine each weighing 55 pounds or more; (v) 10,000 swine each weighing less than 55 pounds; (vi) 500 horses; (vii) 10,000 sheep or lambs; (viii) 55,000 turkeys; (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system; (x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system; (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).

**Liquid manure handling system** means a system that collects and transports or moves waste material with the use of water, such as in washing of pens and flushing of confinement facilities. This would include the use of water impoundments for manure and/or wastewater treatment.

**Manure** is defined to include manure, litter, bedding, compost and raw materials or other materials commingled with manure or set aside for land application or other use.

**Medium CAFO** means any AFO that stables or confines as many or more than the numbers of animals specified in any of the following categories: (i) 200 to 699 mature dairy cattle, whether milked or dry cows; (ii) 300 to 999 veal calves; (iii) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (iv) 750 to 2,499 swine each weighing 55 pounds or more; (v) 3,000 to 9,999 swine each weighing less than 55 pounds; (vi) 150 to 499 horses, (vii) 3,000 to 9,999 sheep or lambs, (viii) 16,500 to 54,999 turkeys, (ix) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system; (x) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (xi) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system; (xii) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or (xiii) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system) **and** either one of the following conditions are met (a) pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (b) pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

**New Source** is defined at 40 CFR 122.2. New source criteria are defined at 40 CFR 122.29(b). For purposes of the proposed permit, a source would be a new source if it commences construction after April 14, 2003 (*see* 40 CFR 122.2).

**Notice of Intent (NOI)** is a form submitted by the owner/operator applying for coverage under a general permit. It requires the applicant to submit the information necessary for adequate program implementation, including, at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). [(40 CFR §128.28(b)(2)(ii)].

**Process wastewater** means water directly or indirectly used in the operation of the CAFO 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 AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with or is a constituent of raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

**Production area** means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal containment area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

**Small CAFO** means an AFO that is designated as a CAFO and is not a Medium CAFO.

**Setback** means a specified distance from waters of the United States or potential conduits to waters of the United States where manure, litter, and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to: Open tile line intake structures, sinkholes, and agricultural well heads.

**The Act** means Federal Water Pollution Control Act as amended, also known as the Clean Water Act as amended, found at 33 USC 1251 et seq.

**Vegetated buffer** means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching waters of the United States.

**Waters of the United States** means: (1) all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (2) all interstate waters, including interstate wetlands; (3) all other waters such as intrastate lakes, rivers, and streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (a) which are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or, which are or could be used for industrial purposes by industries in interstate commerce; (4) all impoundments of waters otherwise defined as waters of the United States; (5) tributaries of waters identified in (1) through (4) of this definition; (6) the territorial sea; and (7) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in items (1) through (6) of this definition.