

ENVIRONMENTAL PROTECTION AGENCY

[FRL-]

Notice of Final NPDES General Permit for Discharges From Concentrated Animal Feeding Operations (CAFOs) in New Mexico (NMG010000)

AGENCY: Environmental Protection Agency (EPA), Region 6

ACTION: Notice of NPDES General Permit Reissuance

SUMMARY: EPA Region 6 today issues a National Pollutant Discharge Elimination System general permit for discharges from eligible owners/operators of existing concentrated animal feeding operations (CAFOs), in New Mexico, except those discharges on Indian Country. All currently operating animal feeding operations that are defined as CAFOs or designated as CAFOs by the permitting authority (See Part VII Definitions, “CAFOs”) and that are subject to 40 CFR Part 412, Subparts A (Horses) and C (Dairy Cows and Cattle Other than Veal Calves) are eligible for coverage under this permit. This permit covers the types of animal feeding operations listed above which meet the definition of a CAFO and discharge or propose to discharge pollutants to waters of the United States. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur.

A copy of the Region's responses to comments and the final permit may be obtained from the EPA Region 6 internet site: <http://www.epa.gov/region6/water/npdes/cafo/index.htm>.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, Water Quality Protection Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone: (214) 665-2145, or via e-mail at: smith.diane@epa.gov.

SUPPLEMENTARY INFORMATION:

Summary of Significant Changes from the Draft Permit.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. section 1342, EPA proposed and solicited comments on NPDES general permit NMG010000 at 74 FR 3592 (January 21, 2009). The comment period closed on February 20, 2009.

Region 6 received comments from the New Mexico Environment Department, US Fish and Wildlife Service, Bureau of Reclamation, New Mexico Department of Agriculture, Dairy Producers of New Mexico, Seaboard Foods, Oklahoma Farm Bureau, Texas Cattle Feeders Association, Oklahoma Pork Council, and Amigos Bravos.

EPA Region 6 has considered all comments received. In response to those comments the following significant changes were made to the proposed permit.

1. Based on NMED condition of certification under section 401 of the Clean Water Act, Part III.A.8 of the permit has been changed to require the use of a certified

specialist to develop, modify, review, and/or approve the nutrient management plan.

2. Part III.A.3.h has been added to the permit to require that the nutrient management plan (NMP) include site maps of the production and land application areas.
3. Part II.A.2.a.x has been modified to include the term “as appropriate.” Part II.A.2.a.x and Part III.A.3.b have also been modified to clarify that retention structures must include adequate storage capacity for clean water that is not diverted.
4. EPA has removed Part III.A.3.f.i-iv from the permit and has modified Part III.A.3.f to require that the NMP include any additional information necessary to assess the adequacy of the application rates included in the NMP.
5. EPA has modified Part III.A.7.d of the permit to require that manure sampling be conducted annually prior to the first land application event of each year of permit coverage and to allow for representative sampling protocols to be established in the NMP.
6. The spills reporting requirement has been removed from Part III.D.3 of the permit and was replaced with a requirement to document spills and clean-up activity.
7. Part III.D.3 of the permit has been modified to state that handling procedures and storage for any toxic and other pollutants must be specified in the NMP.
8. EPA has modified Part III.D.1.c to state that any mechanical or structural damage to the liner must be evaluated by a Natural Resources Conservation Service

(NRCS) Engineer or Professional Engineer and that the permittee shall have a NRCS Engineer or Professional Engineer review documentation.

9. The infiltration monitoring requirement of Part III.D.1.c has been modified to be based on a direct hydrological connection to waters of the United States. EPA has also modified this section to allow for other appropriate measures to be used in lieu of leak detection systems or monitoring wells.
10. EPA has modified the permit to require that annual reports be submitted to EPA and NMED on January 31 as opposed to basing the due date on the NOI submittal date.
11. Parts VI.B.1, VI.B.2, and VI.C.1 have been removed from the permit as they are repetitive of provisions found elsewhere in the permit.
12. EPA has added Part I.H to address the procedure for a change in ownership.
13. The Water Quality-Based Reduction Plan requirement of Part II.A.3.c has been removed from the permit.
14. EPA has modified Part III.C to exclude amounts less than 10 tons per year to a single recipient from the transfer of manure, litter, and process wastewater recordkeeping requirement.
15. EPA has removed the notification requirement from Part III.D.8.a and will rely on the notification requirement of Part III.D.5, which has been modified to require notification within 48 hours.

16. The proposed corrective action requirement proposed as Part II.A.3.d has been clarified to address discharges or proposed discharges to impaired waters and has been moved to Part II.A.3.a.iv.
17. EPA has modified Part IV.A of the permit to require CAFOs to orally report the discharge of pollutants to waters of the United States to NMED.
18. Part I.D.8 and Part I.E.8 of the final permit have been amended to clarify that new sources must submit an Environmental Impact Document (EID), not a previous EPA National Environmental Policy Act (NEPA) review document, with their NOIs.
19. Part II.A.5.c has been amended to clarify that there shall be no unauthorized dry weather discharges from land application sites.
20. EPA has clarified Part I.E.1.a.i to state that for any facility that received authorization to discharge under the 1993 CAFO general permit and complies with the 90-day NOI timeframe, authorization under the 1993 CAFO permit is automatically continued until coverage is granted under this permit or coverage is otherwise terminated.
21. EPA has amended Part I.E.8 to clarify that the applicant must submit to EPA information describing an expansion so that EPA may determine if the expansion is a new source.

Revision to the Permit.

EPA is through today's notice revising Part I.E.6 of the proposed permit. The option to submit a notice of intent (NOI) and nutrient management plan (NMP) electronically via the EPA Region 6 website has been removed from the permit due to unforeseen technical problems. If at any time such a process is implemented by EPA Region 6 for CAFO general permits, CAFOs seeking permit coverage under this permit may use electronic submission.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: July 24, 2009

/s/ Claudia V. Hosch

Claudia V. Hosch

Acting Director

Water Quality Protection Division

EPA Region 6.