

Title 40—Protection of Environment
CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCY
[FRL 503-2]

PART 124—STATE PROGRAM ELEMENTS
NECESSARY FOR PARTICIPATION IN
THE NATIONAL POLLUTANT DIS-
CHARGE ELIMINATION SYSTEM

PART 125—NATIONAL POLLUTANT
DISCHARGE ELIMINATION SYSTEM
Concentrated Animal Feeding Operations

On November 20, 1975, the Environmental Protection Agency (EPA) proposed regulations for applying the National Pollutant Discharge Elimination System (NPDES) permit program to concentrated animal feeding operations (40 FR 54182). These regulations were proposed in accordance with the June 10, 1975, court order issued following the decision of the Federal District Court for the District of Columbia in the case of

NRDC v. Train [396 F. Supp. 1393, 7 ERC 1881 (D.D.C. 1975)]. Although EPA is proceeding with the appeal of this case, the Agency is required to proceed with the promulgation of these regulations. For a detailed history of the development of the proposed regulations, see the preamble to the November 20, 1975, publication.

At the time of the November 20, 1975, publication of the proposed regulations EPA solicited comments on all aspects of the regulations and received more than 50 comments in response from industry groups, educational institutions, environmental organizations, federal, state and local agencies and interested persons. The comments have been carefully considered and several changes have been made to the proposed regulations in response to the suggestions made. The most important of these changes are diagrammed as follows and discussed below.

BASIC STRUCTURE OF FEEDLOT PROGRAM
PROGRAM PROPOSED IN NOV. 5 REGULATIONS

Feedlots with 1,000 or more
animal units

Feedlots with less than 1,000 animal units

Permit required for all feedlots with discharges¹ of pollutants,

Permits required for feedlots with:

- (1) Discharges¹ of pollutants through a manmade conveyance, or
- (2) Discharges¹ of pollutants into waters traversing the confined area.

¹Feedlot not subject to requirement to obtain permit if discharge occurs only in the event of a 25-yr., 24-h., storm event.

NOTE.—All feedlots subject to a case-by-case designation requiring an individual permit.

Basic structure of feedlot program—program promulgated today

Feedlots with 1,000 or more animal units	Feedlots with less than 1,000 but with 300 or more animal units	Feedlots with less than 300 animal units
Permit required for all feedlots with discharges ¹ of pollutants.	Permit required if feedlot— 1. Discharges ¹ pollutants through a manmade conveyance, or 2. Discharges ¹ pollutants into waters passing through or coming into direct contact with animals in the confined area. Feedlots subject to case-by-case designation requiring an individual permit only after onsite inspection and notice to the owner or operator.	No permit required (unless case-by-case designation as provided below). Case-by-case designation only if feedlot— 1. Discharges pollutants through a manmade conveyance, or 2. Discharges pollutants into waters passing through or coming into direct contact with the animals in the confined area; and After onsite inspection, written notices transmitted to the owner or operator.

¹ Feedlot not subject to requirement to obtain permit if discharge occurs only in the event of a 25-yr, 24-h storm event.

(1) As seen in the diagram above, a lower level cutoff number has been added. Under the program established today, permits are required from feeding operations with less than 1,000 but with 300 or more animals only for those operations which have discharges of pollutants (a) through a man-made conveyance or (b) directly into navigable waters which pass through the confined area. For operations with less than 300 head, no permit application is required unless there is an onsite inspection of the operation and the owner or operator is notified in writing that such application is required.

(2) As was pointed out by numerous commenters, the statement by Senator Edmund Muskie regarding feedlots covered by the permit program provided

general guidance rather than a definitive statement of criteria. Although the Agency proposed to adopt the numbers suggested by Senator Muskie, the upper level cutoff numbers established in the July 5, 1973, promulgation (38 FR 18000) of feedlot permit requirements are the basis for the upper levels established today. The numbers published in July 1973 and hereby affirmed require permits for operation with more than 1000 beef cattle; 700 dairy cattle, 2,500 swine; 10,000 sheep; 55,000 turkeys; 100,000 chickens (if the operation has continuous overflow watering); 30,000 chickens (if the operation has a liquid manure handling system); 5,000 ducks; and 500 horses. (See 40 CFR §§ 124.11 (h) (1), 125.4(j) (1), 412.10 and 40 FR 54182.) As

pointed out by the commenters the earlier numbers were much better justified by studies and data than were the numbers set forth in Senator Muskie's guidance. Also, maintaining the same upper level numbers will minimize disruption and confusion among those feedlot operators currently subject to the permit program.

(3) For feeding operations with less than 300 animal units, only those operations which (a) have streams passing through the confined area, or (b) have direct discharges to navigable waters will be subject to the possibility of being designated as a concentrated animal feeding operation on a case-by-case basis by a State pollution control Director or the EPA Regional Administrator. No feeding operation with less than 300 animal units will be required to apply for or obtain a permit unless it meets one of the above criteria, and, following an onsite inspection, the owner or operator has been individually notified in writing that a permit application is required.

RESPONSE TO COMMENTS ON THE PROPOSED PROGRAM

Comments received in response to the proposed November 20, 1975, regulations have been entered into the record of the development of these regulations and are available for public inspection at EPA. All comments received have been carefully considered and many have been adopted or substantially satisfied by editorial changes, deletions or additions to the regulations. Several of the major comments and their disposition are discussed below.

1. The definition of "animal feeding operation" [(a) (1)]. Several commenters pointed out that a clarification of this definition was necessary, particularly as to the intent of the vegetation criterion. To accommodate these comments, this part of the definition section has been revised to include post-harvest residues and to make clear that only confined areas which lack vegetation, crops, etc. in every part or portion of the lot or facility are included within the term "animal feeding operation."

Comments were also received concerning the meaning of "an aggregate of 45 days," suggesting that the word "total" be substituted for "aggregate," or that the phrase be changed to read "45 consecutive days." Changes to the number of days were also suggested, specifically to change the number to 30 or 60 days. However, except for the change of the word "aggregate" to "total," meaning that the 45 days are not necessary continuous, no change has been made to the 45 day criterion.

The comments also make clear that it is necessary to reiterate EPA's intent not to require permits from operations without discharges to navigable waters. As stated in the November 20, 1975, proposed regulations:

It must be emphasized that these regulations do not automatically require applications for permits from every owner or operator of a concentrated animal feeding operation point source. Before a permit is required

there must be a "discharge of a pollutant" from the point source into "navigable waters." If there is no discharge from a particular operation which is a point source, there is no need for a permit. * * * [T]he proposed regulations provide that no permit is required for any concentrated animal feeding operation which discharges pollutants only in the event of a 25 year, 24 hour rainfall event. In addition, although there may be a discharge of a pollutant from a point source, no permit is required if such a discharge does not reach navigable waters.

2. *The definition of "concentrated animal feeding operation" [(a) (2)].* Many comments were received suggesting that this critical term be clarified in several ways.

(a) One commenter pointed out that the word "concentrated" connotes a large number of animals confined in a relatively small area, and indicated that part of the regulations were inconsistent with this plain meaning of the term. The parts of the definition of "concentrated animal feeding operation" beginning with the words "[w]ithout regard to the numbers * * * of animals confined" present a meaning contrary to the ordinary use of the word "concentrated." In order to eliminate this contradiction, additional cutoff numbers have been added to the definition. These numbers would indicate the size of the animal feeding operations which are not, as a general matter, "concentrated" and, therefore, for which, lacking a specific written determination (following a field inspection; see further below) to the contrary, no permit would be required. This de minimis lower level general cutoff is consistent with the decision in *NRDC v. Train* which states that not every "ditch, water bar or culvert" is "meant to be a point source under the Act [Federal Water Pollution Control Act]" (7 ERC 1881 at 1887).

In addition, in response to comments concerning combinations of animals for confined operations, the term "animal unit" is re-established consistent with the term as used in the July 1973 publication. This term is defined and added to the list of definitions for this section.

(b) Many commenters asked for a definition of "measurable wastes." Because it implied the imposition of costly and time-consuming monitoring requirements, the term "measurable wastes" has been deleted. The more consistent term "pollutants," which is defined in section 502(6) of the Federal Water Pollution Control Act (Public Law 92-500; 33 U.S.C. 1251 et seq; the Act), has been inserted instead.

(c) Many commenters also noted the need to clarify the term "navigable waters." This term is fully explained and interpreted in detail at 40 CFR 125.1(p).

(d) Several commenters suggested that the criterion related to waters which "traverse" the operation be clarified. Accordingly, this criterion has been rewritten without the word "traverse" in order to make clear that this criterion relates to waters which come into contact with the animals confined in the operation.

(e) Three commenters pointed out that the words concerning direct discharge were ambiguous in that wastes may be discharged from an animal feeding operation but may not reach navigable waters. These regulations concern only those discharges of animal wastes that enter navigable waters. Thus for example, if discharges leave the feeding operation but do not reach navigable waters because of filter strips or other waste management techniques, no permit is required.

(f) Some comments were received concerning the cutoff numbers used in the definition. The majority of these comments accepted the numbers and urged that they be adopted. One comment suggested higher numbers and a few comments suggested lower numbers. As discussed in more detail above, however, the numbers established in the previous feedlot regulations, published in July 1973, have been reinstated.

(g) Several comments were received in reference to the provision concerning the 25 year, 24 hour storm event. Half of these comments suggested that a 10 year, 24 hour storm event be substituted for the criterion in the proposed regulations. However, consistent with data used in the development of the July 1973 promulgation indicating that such criterion was rational and feasible for all feedlots with 300 or more animal units, the 25 year, 24 hour storm criterion has been retained.

3. *The definition of "man-made" [(a) (3)].* This definition has been amended to reflect four comments recommending a slight expansion of the term.

4. *Application for a permit [(b) (1) and (2)].* Comments were received indicating that the time period between the application date of March 10, 1977, and the implementation deadline in the Act of July 1, 1977, was inadequate to enable owners and operators to construct pollution control devices. In order to alleviate this problem, the deadline for permit applications has been changed to September 1, 1976. This shortened deadline will not be unduly burdensome because the Short Form B on which the permit applications are to be filed is very brief. (The application fee for the Short Form B is \$10). The earlier deadline also provides for more time to comply with the procedural elements of permit issuance, including notice and opportunity for a hearing.

5. *Case-by-case designation [(c)].* Several commenters pointed out a need to specify the criteria listed in this section and to narrow the discretion of the Director or Regional Administrator to designate an animal feeding operation as concentrated and therefore requiring a permit. This section was included in the regulations to provide for flexibility in State pollution control programs which was urged by scores of participants in the public meetings held on this subject. To further define the criteria would defeat the purpose of this provision to provide for site-specific determinations.

However, it is intended that the Director or Regional Administrator should exercise their discretion with respect to facilities having pollution potential. Thus, for operations smaller than 300 animal units only those which (a) have streams passing through the confined area or (b) have direct discharges to navigable waters are subject to this case-by-case designation.

In exercising his discretion, the Director or Regional Administrator will designate a concentrated animal feeding operation only after an onsite inspection and determination that the operation should and could be regulated under the permit program. In addition, before an application is required, the owner or operator of the feedlot will be notified of the application requirement. As with past experience, it is anticipated that the Director or Regional Administrator would exercise this discretion only in exceptional cases.

It bears repeating that owners or operators of point sources are not required to apply for and obtain pollution discharge permits if there is no discharge of pollutants from such point sources into navigable waters. Thus, totally enclosed systems, such as many poultry operations, without discharges into navigable waters are not subject to the permit requirements regardless of their size. Also, no permits would be required from owners or operators of operations which recycle all pollutants to the land, or which absorb all animal wastes in filter strips or otherwise prevent such wastes from reaching navigable waters. Thus, any feedlot owner or operator who uses alternate management techniques and prevents all discharges from reaching navigable waters would not have to obtain a permit.

Because of the importance of promptly making known to other Federal Agencies, States, dischargers, environmentalists and other interested persons the content of these regulations and because of the need to implement this program promptly, the Administrator finds good cause to declare these regulations effective immediately upon publication.

No Inflationary Impact Statement is required by Executive Order 11821 for these regulations since the economic effects will not exceed the criteria established by EPA and approved by the Office of Management and Budget for the preparation of such statements.

Dated: March 10, 1976.

RUSSELL E. TRAIN,
Administrator.

Part 124 of Title 40 of the Code of Federal Regulations, setting forth State program elements necessary for participation in the National Pollutant Discharge Elimination System, is amended as follows:

Subpart A—General

§ 124.1 [Amended]

1. Section 124.1 is amended by deleting subsection (u) and by relettering subsection (v) to (u).

Subpart B—Prohibition of Discharges of Pollutants

§ 124.11 [Amended]

2. Paragraph (h) of § 124.11 is amended by deleting paragraphs (h) (1) and (2); by renumbering paragraphs (h) (3), (4), and (5) to (h) (2), (3), and (4) respectively; and by adding a new paragraph (h) (1) as follows: "(1) Discharges from concentrated animal feeding operations as defined in § 124.82(a) (2)."

Subpart I—Disposal of Pollutants Into Wells

§ 124.80 Redesignated 124.81.

3. Subpart I of Part 124 is amended by deleting the title "Disposal of Pollutants into Wells" and by adding a new title "Special Programs," and by renumbering § 124.80 to 124.81.

4. Subpart I of Part 124 is amended by adding a new § 124.82, Concentrated Animal Feeding Operations, as follows:

§ 124.82 Concentrated Animal Feeding Operations.

(a) Definitions.

For the purpose of this section:

(1) The term "animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 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.

Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of wastes.

(2) The term "concentrated animal feeding operation" means an animal feeding operation which meets the criteria set forth in either (a) (2) (i) or (ii) below:

(i) More than the numbers of animals specified in any of the following categories are confined:

(a) 1,000 slaughter and feeder cattle,

(b) 700 mature dairy cattle (whether milked or dry cows),

(c) 2,500 swine weighing over 55 pounds,

(d) 500 horses,

(e) 10,000 sheep or lambs,

(f) 55,000 turkeys,

(g) 100,000 laying hens or broilers (if the facility has continuous overflow watering),

(h) 30,000 laying hens or broilers (if the facility has a liquid manure handling system),

(i) 5,000 ducks, or

(j) 1,000 animal units; or

(ii) More than the following numbers and types of animals are confined:

(a) 300 slaughter or feeder cattle,

(b) 200 mature dairy cattle (whether milked or dry cows);

(c) 750 swine weighing over 55 pounds,

(d) 150 horses,

(e) 3,000 sheep,

(f) 16,500 turkeys,

(g) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(h) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),

(i) 1,500 ducks, or

(j) 300 animal units;

and either one of the following conditions are met:

(k) Pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar man-made device; or

(l) pollutants are discharged directly into navigable waters which originate outside of and pass over, across, through or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event.

(3) The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the followings numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(4) The term "man-made" means constructed by man and used for the purpose of transporting wastes.

(b) Application for Permit. (1) Any person discharging or proposing to discharge pollutants from a concentrated animal feeding operation, who has not already done so, shall file an application with the Director by September 1, 1976.

(2) (i) Each application must be filed on a Short Form B and completed in accordance with the instructions provided with such form.

(ii) In addition to the information required in the Short Form B the Director may require any applicant to submit such other appropriate information as the Director deems necessary to proceed with the issuance of the permit.

(c) Case-by-case Designation of Concentrated Animal Feeding Operations Notwithstanding any other provision of this section, the Director or the Regional Administrator may designate as a concentrated animal feeding operation any animal feeding operation not otherwise falling within the definition provided in § 124.82(a) (2) above. In making such designation the Director or the Regional Administrator shall consider the following factors:

(1) The size of the animal feeding operation and the amount of wastes reaching navigable waters;

(2) The location of the animal feeding operation relative to navigable waters;

(3) The means of conveyance of animal wastes and process waste waters into navigable waters;

(4) The slope, vegetation, rainfall, and other factors relative to the likelihood or frequency of discharge of animal wastes and process waste waters into navigable waters; and

(5) Other such factors relative to the significance of the pollution, problem sought to be regulated.

Provided, however, that no animal feeding operation with less than the numbers of animals set forth in (a) (2) (ii) above shall be designated as a concentrated animal feeding operation unless such animal feeding operation meets either of the following conditions:

(6) Pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar man-made device; or

(7) Pollutants are discharged directly into navigable waters which originate outside of and pass over, across, through or otherwise come into direct contact with the animals confined in the operation.

In no case shall a permit application be required from a concentrated animal feeding operation designated pursuant to this section until there has been an onsite inspection of the operation and a determination that the operation should and could be regulated under the permit program. In addition, no application shall be required from an owner or operator of a concentrated animal feeding operation designated pursuant to this section unless such owner or operator is notified in writing of the requirement to apply for a permit.

Part 125 of Title 40 of the Code of Federal Regulations, setting forth policies and procedures for the Environmental Protection Agency's administration of its role in the National Pollutant Discharge Elimination System, is amended as follows:

Subpart A—General

§ 125.1 [Amended]

1. Section 125.1 is amended by deleting paragraph (ii) and by relettering paragraph (j) to (ii).

§ 125.4 [Amended]

2. Paragraph (j) of § 125.4 is amended by deleting paragraphs (1) and (2); by renumbering paragraphs (3), (4), and (5) to (2), (3), and (4) respectively; and by adding a new paragraph (1) as follows: "(1) Discharges from concentrated animal feeding operations as defined in section 125.51(a) (2)."

Subpart F—Special Programs

3. Part 125 is amended by adding a new Subpart F, Special Programs, an § 125.51 to read as follows:

§ 125.51 Concentrated Animal Feeding Operations.

(a) Definitions.

For the purpose of this subpart:

(1) The term "animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 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.

Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of wastes.

(2) The term "concentrated animal feeding operation," means an animal feeding operation which meets the criteria set forth in either (i) or (ii) below:

(i) More than the numbers of animals specified in any of the following categories are confined:

(a) 1,000 slaughter and feeder cattle,
(b) 700 mature dairy cattle (whether milked or dry cows),

(c) 2,500 swine weighing over 55 pounds,

(d) 500 horses,

(e) 10,000 sheep or lambs,

(f) 55,000 turkeys,

(g) 100,000 laying hens or broilers (if the facility has continuous overflow watering),

(h) 30,000 laying hens or broilers (if the facility has a liquid manure handling system),

(i) 5,000 ducks, or

(j) 1,000 animal units; or

(ii) More than the following numbers and types of animals are confined:

(a) 300 slaughter or feeder cattle,

(b) 200 mature dairy cattle (whether milked or dry cows),

(c) 750 swine weighing over 55 pounds,

(d) 150 horses,

(e) 3,000 sheep,

(f) 16,500 turkeys,

(g) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(h) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),

(i) 1,500 ducks, or

(j) 300 animal units; and either one of the following conditions are met:

(k) Pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar man-made device; or

(l) Pollutants are discharged directly into navigable waters which originate outside of and pass over, across, through or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event.

(3) The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(4) The term "man-made" means constructed by man and used for the purpose of transporting wastes.

(b) Application for Permit. (1) Any person discharging or proposing to discharge pollutants from a concentrated animal feeding operation, who has not already done so, shall file an application with the Regional Administrator by September 1, 1976.

(2) (i) Each application must be filed on a Short Form B and completed in accordance with the instructions provided with such form.

(ii) In addition to the information required in the Short Form B the Regional Administrator may require any applicant to submit such other appropriate information as the Regional Administrator deems necessary to proceed with the issuance of the permit.

(c) Case-by-case Designation of Concentrated Animal Feeding Operations. Notwithstanding any other provision of

this section, the Director or the Regional Administrator may designate as a concentrated animal feeding operation any animal feeding operation not otherwise falling within the definition provided in § 125.51(a)(2) above. In making such designation the Director or Regional Administrator shall consider the following factors:

(1) The size of the animal feeding operation and the amount of wastes reaching navigable waters;

(2) The location of the animal feeding operation relative to navigable waters;

(3) The means of conveyance of animal wastes and process waste waters into navigable waters;

(4) The slope, vegetation, rainfall, and other factors relative to the likelihood or frequency of discharge of animal wastes and process waste waters into navigable waters; and

(5) Other such factors relative to the significance of the pollution problem sought to be regulated.

Provided, however, that no animal feeding operation with less than the numbers of animals set forth in (a)(2)(ii) above shall be designated as a concentrated animal feeding operation unless such animal feeding operation meets either of the following conditions:

(6) Pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar man-made device; or

(7) Pollutants are discharged directly into navigable waters which originate outside of and pass over, across, through or otherwise come into direct contact with the animals confined in the operation.

In no case shall a permit application be required from a concentrated animal feeding operation designated pursuant to this section until there has been an on-site inspection of the operation and a determination that the operation should and could be regulated under the permit program. In addition, no application shall be required from an owner or operator of a concentrated animal feeding operation designated pursuant to this section unless such owner or operator is notified in writing of the requirement to apply for a permit.

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