

Gage, Hannah

From: Rosborough, Evelyn <rosborough.evelyn@epa.gov>
Sent: Wednesday, February 17, 2016 7:31 AM
To: Gage, Hannah; Burrell, Monica
Cc: Bailey, John; Solaimanian, Jamal; McWilliams, Katherine
Subject: RE: Review Draft NPDES General Permit for CAFO Permit (ARG590000)

Hello Ms. Hannah,

Permit ARG590000 General Permit for CAFO was received on yesterday, Tuesday February 16, 2016. If you have any questions, please let me know.

Thanks,m

Evelyn Rosborough

U. S. Environmental Protection Agency - Region 6
Water Quality Protection Division
1445 Ross Avenue
Dallas, TX 75202-2733
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From: Gage, Hannah [<mailto:gageh@adeq.state.ar.us>]
Sent: Tuesday, February 16, 2016 3:53 PM
To: Rosborough, Evelyn; Burrell, Monica
Cc: Bailey, John; Solaimanian, Jamal; McWilliams, Katherine
Subject: Review Draft NPDES General Permit for CAFO Permit (ARG590000)

February 16, 2016

Ms. Evelyn Rosborough (6WQ-O)
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733

RE: NPDES Permit Number ARG590000 - Eligible Operators of Concentrated Animal Feeding Operations (CAFOs) located within the State of Arkansas

Dear Ms. Rosborough:

Pursuant to Section III.B.7 and VI.A.2 of the Memorandum of Agreement (MOA), the subject updated draft NPDES General Permit that ADEQ is planning to send to public notice was e-mailed to you this date for review. Enclosed is the updated draft permit based on your recommendations for your review and approval. A copy of the response to your recommendations is also enclosed. The Department greatly appreciate if you can expedite your review and approval since we are closing to our deadlines and need to send this out for public notice. Thanks.

If you have any questions, please feel free to contact me at (501) 682-0629.

Sincerely,

John Bailey, P.E.
Permits Branch Manager
Water Division

Attachment (Permit, Fact Sheet, and Response to Recommendations)

The Department has reviewed the recommendations and comments from EPA Region 6 for the reissuance of NPDES CAFO Permit No. ARG590000. Based on these recommendations and comments, the draft permit and draft fact sheet have been revised to incorporate some of these recommendations and comments. Provided below are the changes that were made to draft permit and draft fact sheet as well as recommendations and comments that were not included in the revision.

DRAFT FACT SHEET

- Recommendation 1:** Section 3, Page 2 Permit Coverage – A recommendation is made for the second sentence “Once an operation is defined as a CAFO, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.” to include a reference to mortality management consistent with definition 10.29 of the permit for production area. In the general permits that we see, there has been an increased emphasis on mortality management. This recommendation also covers language throughout the Fact Sheet and General Permit whenever management of manure, litter, or process wastewater is discussed such as in: the **Fact Sheet** - Section 11, Page 7 Antidegradation Review 3rd paragraph; **Permit** – Cover Page; **Permit** – Section 1.2, Page 1 of Part 1 Permit Coverage; **Permit** – Section 2.2.2.3, Page 6 of Part 2; **Permit** – Sections 3.2.1.7 and 3.2.1.8, Page 9 of Part 3; **Permit** – Sections 3.2.4.2 and 3.2.4.3, Page 10 of Part 3; **Permit** – Section 3.2.5, Pages 10 and 11 of Part 3; **Permit** - Section 3.2.5.1, Page 11 of Part 3; **Permit** – Section 3.2.5.2, Pages 11 and 12 of Part 3; **Permit** – Section 3.2.6.3, Page 13 of Part 3; **Permit** – Section 4.1, Page 15 of Part 4; and **Permit** - Section 4.1.2.5, Page 16 of Part 4. Consistent approach recommended throughout the documents.
- Response 1:** Language for mortality management has been added to the following sections of the draft fact sheet and draft permit: **Fact Sheet** - Section 11, Page 7 Antidegradation Review 3rd paragraph; **Permit** – Cover Page and Section 1.2. The following sections of the draft permit were not revised because the sections discuss land application protocols and land application rates of manure, litter or process wastewater: Section 2.2.2.3; Sections 3.2.1.7 and 3.2.1.8; Sections 3.2.4.2 and 3.2.4.3; Section 3.2.5; Sections 3.2.5.1 and 3.2.5.2; Section 3.2.6.3; Section 4.1; and Section 4.1.2.5.
- Recommendation 2:** Section 3.2, Page 4 Buffalo River Watershed Exclusion – Clarification is recommended throughout as it is a bit confusing when excluding only new coverage of medium or large swine CAFOs while talking about all CAFOs in general. This may lead to believe that it is okay to consider non swine CAFOs.
- Response 2:** Section 3.2 has not been revised. Arkansas Pollution Control & Ecology Commission Regulation 6.602 prohibits only new medium and large swine CAFOs in the Buffalo National River Watershed or modification of existing CAFOs to increase the number of swine. Other CAFOs are not prohibited by the APC&EC Reg. 6.602.
- Recommendation 3:** Section 10.7, Page 5 Recommended Standards for Wastewater Facilities – Recommend that this citation is identified further (i.e., 10 States Standards, xx Edition).

Response 3: Section 10.7 has been revised to the following: Recommended Standards for Wastewater Facilities, 2014 edition.

Recommendation 4: Section 11, Page 7 Antidegradation Review –
a. The 1st paragraph, 2nd sentence should probably be expounded to show that over xx years there has been no degradation results by the only permitted applicant.
b. The 2nd paragraph contains a very long sentence that states “...operated, and maintained to at a minimum contain all...” which creates confusion and should be clarified.
c. Is there a specific reason that the last sentence of this paragraph identifies ‘New facilities’ in general versus CAFO facilities or does this even matter since there will be only one swine CAFO?

Response 4: A sentence has been added in Section 11, paragraph 1 to discuss the study currently being conducted in the Buffalo National River Watershed. The sentence in Section 11, paragraph 2 has been reworded to eliminate confusion. The last sentence regarding the modeling requirements for new facilities in Section 11, paragraph 2 has been removed to avoid confusion.

DRAFT PERMIT

Recommendation 1: Section 1.4.5.b, Page 2 of Part 1 – “...where constitutes concerned are present...” should probably read “where constituents of concern are present” or “where constituents concerned are present...”.

Response 1: The typographical error has been corrected in Section 1.4.5.b.

Recommendation 2: Section 1.6.3, Page 3 of Part 1 – Several references are made to an ‘individual NPDES permit’. It is recommended that this wording remains consistent with Section 1.4, Page 1 of Part 1 where the term ‘alternative permit’ is used. Also see Section 1.7.1, Page 4 of Part 1 where the term ‘replacement’ is used and Section 1.7.4, Page 4 of Part 1 where the terms ‘alternative general permit or an individual permit’ are used. In addition, Section 6.1, Page 22 of Part 6 Duty to Comply uses the term ‘individual permit’.

Response 2: The wording “general permit or an individual” has been removed in Section 1.7.4. for consistency. Alternative permit replaced “appropriate final, individual permit” in Section 1.6.3 for consistency. However, the term “replacement” in Section 1.7.1 was not replaced with alternative permit. “Replacement” in this section refers specifically to a replacement of this permit and not the coverage of the permittee under a general permit or individual permit. The term “individual permit” in Section 6.1 was not replaced in this section since the Department would not allow a facility to be covered under another general permit if the permittee is not in compliance with the terms of this general permit. The use of “alternative permit” in this section would allow for either coverage under a general permit or individual permit.

Recommendation 3: Section 2.1, Page 6 of Part 2 Effluent Limitations and Standards for Subpart A – Horses and Sheep – Recommend removing this as this permit will only be pertinent to one swine operation.

- Response 3:** Section 2.1 was not removed because this general permit is intended to be available for any facility that meets the definition of a CAFO. Coverage is not limited to only one swine facility.
- Recommendation 4:** Section 2.4, Page 7 of Part 2 New Source Performance standards (NSPS) for Subpart D (Swine, Poultry and Veal Calves) – Recommend removing this section as new sources appear ineligible. Removing this may confuse the permit further since there is only one expected permittee. It appears as though the permit is still intended to be used for general education purposes.
- Response 4:** Section 2.4 was not removed. Facilities that meet the definition of a CAFO may apply for coverage under this permit, except those facilities that are excluded by APC&EC Regulation 6.
- Recommendation 5:** Section 5, Pages 19-21 of Part 5 NOI and NMP REVIEW & PUBLIC NOTIFICATION PROCESS appears incomplete without identifying how public responses will be managed. Provide further clarification.
- Response 5:** The management of public response is included in Section 5.2.2.2., which states that the Department will respond to comments received during the public comment period and, if necessary, require the CAFO operator to revise the nutrient management plan.
- Recommendation 6:** Section 9.6, Page 30 of Part 9 Reserved was initially the Duty to Reapply. Without some semblance of this, it appears that the permit could go on in the administrative continuance process indefinitely. It appears that some language is warranted.
- Response 6:** Section 9.6 was updated to include language for Duty to Reapply.

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ARG590000

In accordance with the provisions of the Arkansas Water and Air Pollution Control Act (Ark. Code Ann. § 8-4-101 *et seq.*), and the Clean Water Act (33 U.S.C. § 1251 *et seq.*),

Eligible Operators of Concentrated Animal Feeding Operations (CAFOs) located within the State of Arkansas

are authorized to construct and operate a Concentrated Animal Feeding Operation as defined in Part 10 of this permit, except those facilities which are excluded in Part 1.4 of this general permit. Coverage under this permit authorizes the land application of manure, litter, or process wastewater and mortality management in accordance with a nutrient management plan. This permit also authorizes discharges from a wastewater storage lagoon only when a precipitation event meets or exceeds a 25-year, 24-hour rainfall event.

After properly filing a Notice of Intent (NOI) and other required documentation under Part 1.5 and proceeding through required public notification processes, facilities that are eligible for coverage under this general permit, will receive a Notice of Coverage (NOC) letter, with a tracking number starting with ARG59, and a copy of the permit for the facility. A copy of the facility's Nutrient Management Plan (NMP) will be included with the coverage letter and incorporated into this general permit as an enforceable permit condition. If site specific permit terms have been required by the Director, these terms will be included with the NOC letter as an enforceable permit condition. Not following terms of the NMP, site specific permit terms, or any other permit condition is a violation of this permit. The NOC letter includes the Department's determination that a facility is covered under this general permit.

Effective Date: November 1, 2016

Expiration Date: October 31, 2021

~~Ellen Carpenter~~ Caleb J. Osborne

Date

~~Chief~~ Associate Director, Water Division Office of Water Quality

Arkansas Department of Environmental Quality

Issue

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PART 1

PERMIT AREA AND COVERAGE

1.1 Permit Area

This permit applies to operations defined as Concentrated Animal Feeding Operations (CAFOs) that discharge and are located in the State of Arkansas.

1.2 Permit Coverage

This permit covers the construction and operation of facilities that meet the definition of a CAFO as well as land application, mortality management, and discharge of pollutants to Waters of the State. Any process wastewater pollutants in the overflow may be discharged into Waters of the State as authorized under the terms of this permit whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source. Once an operation is defined as a CAFO, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

1.3 Eligibility for Coverage

Unless excluded from coverage in accordance with Part 1.4 below, operators of existing, currently operating animal feeding operations or proposed animal feeding operations that are defined as CAFOs or designated as CAFOs by the Director as defined in Part 10 and that are subject to 40 CFR Part 412, Subparts A (Horses and Sheep), C (Dairy Cows and Cattle Other than Veal Calves) and D (Swine, Poultry and Veal Calves) are eligible for coverage under this permit. As defined in Part 10.9 of this general permit, a CAFO is any one of the following:

1. A large concentrated animal feeding operation,
2. A medium concentrated animal feeding operation, or
3. An animal feeding operation that is designated by the Director as a CAFO.

In addition, two or more animal feeding operations under common ownership are considered a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

1.4 Limitations on Coverage (Exclusion)

The following CAFOs are not eligible for coverage under this NPDES general permit, and must apply for an alternative permit:

- 1.4.1 CAFOs that have been notified by ADEQ to apply for an individual NPDES permit in accordance with Part 1.6 of this permit.
- 1.4.2 CAFOs housing ducks as defined in 40 CFR 412 under Subpart B – Ducks.
- 1.4.3 CAFOs requesting voluntary performance standards under 40 CFR 412.31(a)(2).
- 1.4.4 CAFOs that have been notified by ADEQ that they are ineligible for coverage because of a past history of repeated non-compliance of permit requirements.

- 1.4.5 Dischargers to water quality impaired water (The latest Arkansas 303(d) list) unless the operator:
- 1.4.5.1 prevents any discharge that contains pollutant(s) for which the waterbody is impaired, and includes documentation of procedures taken to prevent such discharge in the Nutrient Management Plan (NMP); or
 - 1.4.5.2 documents that the pollutant(s) for which the waterbody is impaired is not present at the facility, and retains documentation of this finding with the NMP; or
 - 1.4.5.3 in advance of submitting the NOI, provides to ADEQ data to support a showing that the discharge is not expected to cause or contribute to an exceedance of a water quality standard, and retains such data onsite with the NMP. To do this, the operator must provide data and other technical information to ADEQ sufficient to demonstrate:
 - a For discharges to waters without an ADEQ approved or established TMDL, that the discharge of the pollutant for which the water is impaired will meet in-stream water quality criteria at the point of discharge to the waterbody; or
 - b For discharges to waters with an ADEQ approved or established TMDL where ~~constitutes constituents concerned of concern~~ are present, that there is a sufficient remaining wasteload allocation in an ADEQ approved or established TMDL to allow the facility's discharge and existing dischargers to the waterbody to be discharged at loads designed to bring the waterbody into attainment with water quality standards. Operators are eligible under this section if they receive an affirmative determination from ADEQ that the discharge will not contribute to the existing impairment, in which case the operator must maintain such determination onsite with the NMP.
 - 1.4.6 CAFOs which the Department reasonably believes cannot meet applicable federal effluent limitation guidelines or other conditions of this general permit.
 - 1.4.7 New CAFOs within the watershed of the Buffalo National River subject to APC&EC Regulation 6.602.

1.5 Application for Coverage and Renewal Coverage

- 1.5.1 Operators of CAFOs seeking to be covered or continued coverage by this permit must:
- 1.5.1.1 Submit an NOI. This form is available on the ADEQ website http://www.adeq.state.ar.us/water/branch_permits/general_permits/default.htm
 - 1.5.1.2 Submit a nutrient management plan (NMP) with the NOI that meets the requirements of 40 CFR 122 and 412 and has been developed in accordance with Arkansas Natural Resource Conservation Service Practice Standard Code 590 (Nutrient Management), including the Arkansas Phosphorous Index, 2010 Revision.
 - 1.5.1.3 Submit an ADEQ Disclosure Statement in accordance with the Arkansas Pollution Control & Ecology Commission's (APCEC) Regulation No. 8.
 - 1.5.1.4 Submit permit fees (\$200) upon invoicing, after the initial permit and annually thereafter.
 - 1.5.1.5 Submit an ADEQ Form 1 and plans and specifications that are stamped by a Professional Engineer registered in Arkansas for construction of new or revised pond(s).
 - 1.5.1.6 Submit a one-time \$500 construction fee, as applicable.

1.5.2 Where to Submit

CAFOs must submit signed copies of the NOI, NMP and Disclosure Statement (and ADEQ Form 1, if applicable) to the Department at one of the following addresses:

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Part 1

Arkansas Department of Environmental Quality
~~General~~ Permits Branch – ~~Water Division~~ Office of Water Quality
5301 Northshore Drive
North Little Rock, AR 72118

Formatted: Indent: Left: 0", First line: 0"

Or by electronic mail (Complete documents must be submitted in PDF format) to:
Water-permit-application@adeq.state.ar.us

Or online at:

<https://eportal.adeq.state.ar.us/>

1.6 Requiring an Individual Permit

- 1.6.1 The Director may require any person eligible for coverage under the general permit to apply for and obtain an individual permit. In addition, any interested person(s) may submit an application for an individual permit. The Director may require a person to apply for an individual permit in accordance with the criteria in 40 CFR 122.28(b)(3). These criteria in 40 CFR 122.28(b)(3) are incorporated by reference.
- 1.6.2 Coverage of the facility under this general NPDES permit is automatically terminated when: (1) the operator fails to submit a required individual permit application within the defined time frame; or (2) individual permit is issued by ADEQ and becomes effective.
- 1.6.3 Any operator covered under this general permit may request to be excluded from the coverage of this permit by applying for either a APC&EC Regulation 6 individual permit or APC&EC Regulation 5 individual permit. The operator shall submit an application for an individual permit with the reasons supporting the application to ADEQ. If an ~~appropriate~~ ~~final, individual~~ alternative permit is issued to an operator otherwise subject to this general permit, the applicability of this NPDES CAFO general permit to the facility is automatically terminated on the effective date of the individual permit. Otherwise, the applicability of this general permit to the facility remains in full force and effect (for example, if an individual permit is denied to an operator otherwise subject to this general permit).

1.7 Continuation of this Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 40 CFR 122.6 ~~and APC&EC Regulation 6~~ and remain in force and effect. If a permittee is authorized to discharge under this permit prior to the expiration date, any discharges authorized under this permit will automatically remain covered by this permit until the earliest of:

- 1.7.1 Coverage being authorized under a reissued permit or a replacement of this permit following the submittal of a complete renewal NOI and NMP within 90 days after the issuance date of the new permit; or
- 1.7.2 A formal decision by ADEQ to grant a permittee's request for termination of permit coverage; or
- 1.7.3 The effective date of a final permitting decision to issue or deny of an individual permit for the facility's discharges; or
- 1.7.4 A formal permit decision by ADEQ not to reissue this general permit, at which time ADEQ will identify a reasonable time period for covered dischargers to seek coverage under an

alternative ~~general permit or an individual~~ permit. Coverage under this permit will cease at the end of this time period.

1.8. Change in Ownership

If a change in the ownership of a facility whose discharge is authorized under this permit occurs, a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees must be submitted to ADEQ at the address specified in Part 1.5.6. The new owner must submit an ADEQ Disclosure Statement with the transfer request on an ADEQ Transfer Form. ADEQ will notify the new permittee if the transfer of permit coverage is granted.

Until the disclosure statement and transfer request are submitted and accepted by ADEQ, the current permittee shall remain liable for all permit fees and meeting permit requirements, even if the current permittee no longer owns the facility.

1.9. Construction Requirements

- 1.9.1. CAFOs shall be designed in accordance with the following United States Department of Agriculture Natural Resource Conservation Service technical publications or the following sections of the Recommended Standards for Wastewater Facilities, whichever is more stringent:

- 1.9.1.1. Field Office Technical Guide, as amended; and
- 1.9.1.2. Agricultural Waste Management Field Handbook, as amended.
- 1.9.1.3. Additional requirements as authorized by A.C.A. 8-4-203(a)(1). The Department shall provide justification for additional requirements.
- 1.9.1.4. Sections 93.21-93.23, 93.411-93.415, 93.417, 93.421 and 93.422 of Recommended Standards for Wastewater Facilities.

- 1.9.2. CAFOs shall not begin operation until authorization to operate is issued by the Department. Certification that the CAFO was built in accordance with the approved plans and specifications shall be signed and stamped by a Professional Engineer registered in the State of Arkansas and shall be submitted to the Department.

1.10. Closure Plan Required

Should a permitted concentrated animal feeding operation cease operation, the permittee shall submit to the Department for review and approval a closure plan for the liquid waste system storage/treatment structure(s) within sixty (60) days of the final day of operation. Within ten (10) days of completion of closure activities, the permittee shall submit a certification that the facility was closed in accordance with the approved closure plan. The closure plan and closure certification shall be prepared by the USDA Natural Resource Conservation Service addressing the closure of facilities in accordance with Arkansas NRCS Conservation Practice Standard Code 360 (Closure of Waste Impoundments), an Arkansas Natural Resources Commission water quality technician, the University of Arkansas Cooperative Extension Service or a professional engineer registered in the State of Arkansas.

PART 2
EFFLUENT LIMITATIONS AND STANDARDS

2.1 Effluent Limitations and Standards for Subpart A – Horses and Sheep

2.1.1 Effluent Limitations

- 2.1.1.1. Except when the provisions of Part 2.1.1.2 apply, there shall be no discharge of process wastewater pollutants into Waters of the State.
- 2.1.1.2. Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into Waters of the State. Samples must be collected as specified in Part 2.3 of this general permit.

2.2 Effluent Limitations and Standards for Subpart C (Dairy Cows and Cattle Other Than Veal Calves) and Subpart D (Swine, Poultry And Veal Calves)

2.2.1 Production areas:

- 2.2.1.1. There must be no discharge of manure, litter, or process wastewater pollutants into Waters of the State from the production area except;
- 2.2.1.2. All CAFOs subject to 40 CFR 412 Subpart C and existing sources subject to 40 CFR 412 Subpart D: whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into Waters of the State provided:
 - a The production area is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24hour rainfall event;
 - b Samples are collected as specified in Part 2.3 of this general permit;
 - c The production area is operated in accordance with the additional measures and records as specified in Part 4.4 of this permit.

2.2.2 Land application areas: land application areas are subject to the following requirements:

- 2.2.2.1. Develop and implement the Best Management Practices (BMP) specified in Parts 4.1 and 4.2 of this permit;
- 2.2.2.2. Maintain-all records needed to document compliance with Part 4.5 of this permit;
- 2.2.2.3. There shall be no discharge of manure, litter, or process wastewater to Waters of the State 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.

2.3 Sampling and Monitoring Requirements for All Discharges from Retention Structures

In the event of any overflow or other discharge of pollutants from a manure or wastewater storage or retention structure, whether or not authorized by this permit, the following actions shall be taken.

2.3.1 All discharges to Waters of the State shall be sampled, analyzed and reported as follows:

Parameters	Limits	Sample Frequency	Sample Type
Flow Volume (GPD)	Report	Once per discharge event	Estimate
Flow Date	Report	N/A	N/A
Flow Time	Report	N/A	N/A
Biochemical oxygen demand (BOD5)	Report	Once per discharge event	Grab
Total suspended solids (TSS)	Report	Once per discharge event	Grab
Fecal Coliform bacteria (FCB)	Report	Once per discharge event	Grab
Total phosphorus (TP)	Report	Once per discharge event	Grab
Ammonia nitrogen (NH3-N)	Report	Once per discharge event	Grab
Total nitrogen (TN)	Report	Once per discharge event	Grab
Nitrate nitrogen (NO3)	Report	Once per discharge event	Grab
pH	Report	Once per discharge event	Grab

2.3.2 The sample shall be collected and analyzed in accordance with EPA approved methods for water analysis listed in 40 CFR 136. Samples collected shall be representative of the monitored discharge.

2.3.3 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 dangerous conditions have passed, the permittee shall collect a sample from the retention structure (pond or lagoon) from which the discharge occurred.

2.3.4 Monitoring results must be submitted to ADEQ Water Enforcement Division, within thirty (30) days of the discharge event at the address listed in Part 8.4 of this permit.

2.4 New source performance standards (NSPS) for Subpart D (Swine, Poultry and Veal Calves)

Any new source subject to this subpart must achieve the following effluent limitations representing the application of NSPS. Land application requirements for new source CAFOs subject to Subpart D are identical to those of Part 2.2.2.

2.4.1 Any CAFO subject to this subpart may request that the Director establish NPDES permit best management practice effluent limitations designed to ensure no discharge of manure, litter, or process wastewater based upon a site-specific evaluation of the CAFO's open surface manure storage structure. The NPDES permit best management practice (BMP) effluent limitations must address the CAFO's entire production area. In the case of any CAFO using an open

surface manure storage structure for which the Director establishes such effluent limitations, “no discharge of manure, litter, or process wastewater pollutants,” as used in this section, means that the storage structure is designed, operated, and maintained in accordance with best management practices established by the Director on a site-specific basis after a technical evaluation of the storage structure. The technical evaluation must address the following elements:

- 2.4.1.1. Information to be used in the design of the open manure storage structure including, but not limited to, the following: minimum storage periods for rainy seasons, additional minimum capacity for chronic rainfalls, applicable technical standards that prohibit or otherwise limit land application to frozen, saturated, or snow-covered ground, planned emptying and dewatering schedules consistent with the CAFO’s Nutrient Management Plan, additional storage capacity for manure intended to be transferred to another recipient at a later time, and any other factors that would affect the sizing of the open manure storage structure.
- 2.4.1.2. The design of the open manure storage structure as determined by the most recent version of the National Resource Conservation Service’s Animal Waste Management (AWM) software. CAFOs may use equivalent design software or procedures as approved by the Director.
- 2.4.1.3. All inputs used in the open manure storage structure design including actual climate data for the previous 30 years consisting of historical average monthly precipitation and evaporation values, the number and types of animals, anticipated animal sizes or weights, any added water and bedding, any other process wastewater, and the size and condition of outside areas exposed to rainfall and contributing runoff to the open manure storage structure.
- 2.4.1.4. The planned minimum period of storage in months including, but not limited to, the factors for designing an open manure storage structure listed in part 2.4.1.1. of this section. Alternatively the CAFO may determine the minimum period of storage by specifying times the storage pond will be emptied consistent with the CAFO’s Nutrient Management Plan.
- 2.4.1.5. Site-specific predicted design specifications including dimensions of the storage facility, daily manure and wastewater additions, the size and characteristics of the land application areas, and the total calculated storage period in months.
- 2.4.1.6. An evaluation of the adequacy of the designed manure storage structure using the most recent version of the Soil Plant Air Water (SPAW) Hydrology Tool. The evaluation must include all inputs to SPAW including but not limited to daily precipitation, temperature, and evaporation data for the previous 100 years, user-specified soil profiles representative of the CAFO’s land application areas, planned crop rotations consistent with the CAFO’s Nutrient Management Plan, and the final modeled result of no overflows from the designed open manure storage structure. For those CAFOs where 100 years of local weather data for the CAFO’s location is not available, CAFOs may use a simulation with a confidence interval analysis conducted over a period of 100 years. The Director may approve equivalent evaluation and simulation procedures.
- 2.4.1.7. Waste management and storage facilities designed, constructed, operated, and maintained consistent with the analysis conducted in Parts 2.4.1.1 through 2.4.1.6 of this section and operated in accordance with the additional measures and records required by Part 4.4 of this permit, will fulfill the requirements of this section.
- 2.4.1.8. The Director has the discretion to request additional information to support a request for effluent limitations based on a site-specific open surface manure storage structure.

PART 3

NUTRIENT MANAGEMENT PLANS (NMP) AND ANNUAL REPORTING REQUIREMENTS

3.1 APPLICABILITY

Any CAFO with permit coverage under this general permit shall develop and implement a site-specific nutrient management plan (NMP). The NMP must be in compliance with 40 CFR 122 and 412 and developed in accordance with the Arkansas NRCS Conservation Service Practice Standard Code 590 (Nutrient Management), including the Arkansas Phosphorus Index, 2010 Revision.

3.2 NUTRIENT MANAGEMENT PLAN CONTENTS

3.2.1 Requirement to implement a nutrient management plan.

All CAFOs covered under this general permit must implement the site-specific nutrient management plan that, at a minimum, contains practices and procedures necessary to implement the applicable effluent limitations and standards. In addition, the NMP must, as applicable:

- 3.2.1.1 Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- 3.2.1.2 Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, stormwater, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- 3.2.1.3 Ensure that clean water is diverted, as appropriate, from the production area;
- 3.2.1.4 Prevent direct contact of confined animals with Waters of the State;
- 3.2.1.5 Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
- 3.2.1.6 Identify appropriate site specific conservation practices to be implemented, including as appropriate setback, buffers or equivalent practices, to control runoff of pollutants to Waters of the State;
- 3.2.1.7 Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
- 3.2.1.8 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; and
- 3.2.1.9 Identify specific records that will be maintained to document the implementation and management of the minimum elements described in parts 3.2.1.1 to 3.2.1.8 of this section.

3.2.2. Recordkeeping requirements

- 3.2.2.1 The permittee must create, maintain for five years, and make available to the Director, upon request, the following records:
 - a All applicable records identified pursuant to part 3.2.1.9 above
 - b All CAFOs must comply with record keeping requirements as specified in Parts 4.4.2., 4.5., and 8.6 of this permit.

- 3.2.2.2 A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the Director upon request.
- 3.2.3 **Requirements relating to transfer of manure or process wastewater to other persons.** Prior to transferring manure, litter or process wastewater to other persons, Large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 CFR 412. Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter or process wastewater transferred to another person.
- 3.2.4 **Annual reporting requirements for CAFOs.** The permittee must submit an annual report to the Director. The annual report is due by the 31st day of January each year for the previous January – December reporting period (i.e. January 31, 2012 for Year 2011). The first report may include less than the 12 months of information and must include:
- 3.2.4.1 The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
 - 3.2.4.2 Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
 - 3.2.4.3 Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);
 - 3.2.4.4 Total number of acres available for land application covered by the nutrient management plan developed in accordance with Part 3 of the permit;
 - 3.2.4.5 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;
 - 3.2.4.6 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;
 - 3.2.4.7 A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and
 - 3.2.4.8 The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with Parts 3.2.5.1.b and 3.2.5.2.d of this section, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with Part 3.2.5.2 of this section, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with Part 3.2.5.2.d of this section, and the amount of any supplemental fertilizer applied during the previous 12 months.
- 3.2.5 **Terms of the nutrient management plan.** Any permit issued to a CAFO must require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the Director to be necessary to meet the requirements of Part 3.2.1 of this section. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process

wastewater required by Part 3.2.1.8 of this section and, as applicable, 40 CFR 412.4(c), must include the fields available for land application; field-specific rates of application properly developed, as specified in Parts 3.2.5.1 through 3.2.5.2 of this section, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms must address rates of application using one of the following two approaches, unless the Director specifies that only one of these approaches may be used:

3.2.5.1 Linear approach. An approach that 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 the Director, 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 pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the Director 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; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include 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 nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.
- 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; or

3.2.5.2 Narrative rate approach. An approach that expresses rates of application as a narrative rate of application that 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 nutrient management plan, in chemical forms determined to be acceptable to the Director, 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 Part 3.2.5.2.b of this section); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the Director for each crop or

use identified for each field. In addition, the terms include the methodology by which the nutrient management plan 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, as required by Part 3.2.1.7 of this section; 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.

- b The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, 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 sources specified by the Director for each crop. 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 Part 3.2.5.2.a of this section.
- c For CAFOs using this approach, the following projections must be included in the nutrient management plan submitted to the Director, but are not terms of the nutrient management plan: 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 nutrient management plan.
- 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 Part 3.2.5.2.a of this section before land applying manure, litter, and process wastewater and must rely on the following data:
 - i 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 by Part 3.2.5.2.a of this section, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the Director; and
 - ii 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.

3.2.6 **Changes to a nutrient management plan.** Any permit issued to a CAFO operator must require the following procedures to apply when a CAFO operator makes changes to the CAFO's nutrient management plan previously submitted to the Director:

- 3.2.6.1 The CAFO operator must provide the Director with the most current version of the CAFO's nutrient management plan and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of Parts 3.2.5.1.b and 3.2.5.2.d of this section are not subject to the requirements of Part 3.2.6 of this section.
- 3.2.6.2 The Director must review the revised nutrient management plan to ensure that it meets the requirements of this section and applicable effluent limitations and standards, including those specified in 40 CFR part 412, and must determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the Director must notify the CAFO operator and upon such notification the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the Director must determine whether such changes are substantial changes as described in Part 3.2.6.3 of this section.
- a If the Director determines that the changes to the terms of the nutrient management plan are not substantial, the Director must make the revised nutrient management plan publicly available and include it in the permit record, revise the terms of the nutrient management plan incorporated into the permit, and notify the operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit.
 - b If the Director determines that the changes to the terms of the nutrient management plan are substantial as specified in 3.2.6.3 below, the Director must notify the public and make the proposed changes and the information submitted by the CAFO operator available for public review and comment as specified in Part 5.
- 3.2.6.3 Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:
- a Addition of new land application areas not previously included in the CAFO's nutrient management plan. Except that if the land application area that is being added to the nutrient management plan is covered by terms of a nutrient management plan incorporated into an existing NPDES permit in accordance with the requirements of Part 3.2.5 of this section, and the CAFO operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly added land application area, such addition of new land would be a change to the new CAFO operator's nutrient management plan but not a substantial change for purposes of this section;
 - b Any changes to the field-specific maximum annual rates for land application, as set forth in Parts 3.2.5.1 of this section, and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in Part 3.2.5.2 of this section;
 - c Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application expressed in accordance with Part 3.2.5 of this section; and

- d Changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to Waters of the State.

3.2.6.4 Non-Substantial changes:

Upon receipt of written consent by the CAFO operator, the Director may modify a permit to make the changes listed in this section following the procedures established in Part 3.2.6.2.a of this permit without a public notice where such changes are not likely to increase the risk of nitrogen and phosphorus transport to Waters of the State, but changes will be made publicly available:

- a. Correct typographical errors;
- b. Allow for a change in ownership or operational control of a facility (transfer of the permit) where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.
- c. Transfer permitted land application sites to another permit for the same waste source.
- d. Remove land application sites from a permit.

**PART 4
SPECIAL CONDITIONS FOR SUBPARTS C & D**

**REQUIREMENT TO DEVELOP AND IMPLEMENT BEST MANAGEMENT PRACTICES
(BMP)**

4.1 SPECIALIZED DEFINITIONS

Setback means a specified distance from surface waters or potential conduits to surface waters 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. Setback distances for streams, ponds and lakes shall be measured from the ordinary high water mark.

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 surface waters.

Multi-year phosphorus application means phosphorus applied to a field in excess of the crop needs for that year. In multi-year phosphorus applications, no additional manure, litter, or process wastewater is applied to the same land in subsequent years until the applied phosphorus has been removed from the field via harvest and crop removal.

Each CAFO subject to this section that land applies manure, litter, or process wastewater, must do so in accordance with the following practices:

4.2 Nutrient Management Plan. The CAFO must develop and implement a nutrient management plan that incorporates the requirements of this section based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and that addresses 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.

4.2.1 Determination of application rates. Application rates for manure, litter, and other process wastewater applied to land under the ownership or operational control of the CAFO must minimize phosphorus and nitrogen transport from the field to surface waters in compliance with the Arkansas NRCS Conservation Service Practice Standard Code 590 (Nutrient Management), including the Arkansas Phosphorous Index, 2010 Revision. Such technical standards for nutrient management shall:

4.2.1.1 Include a field-specific assessment of the potential for nitrogen and phosphorus transport from the field to surface waters, and 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; and

4.2.1.2 Include appropriate flexibilities for any CAFO to implement nutrient management practices to comply with the technical standards, including consideration of multi-year phosphorus application on fields that do not have a high potential for phosphorus runoff

to surface water, phased implementation of phosphorus-based nutrient management, and other components, as determined appropriate by the Director.

- 4.2.1.3 **Manure and soil sampling.** Manure must be analyzed a minimum of once annually for nitrogen and phosphorus content, and soil analyzed a minimum of once every three years for phosphorus content. The results of these analyses are to be used in determining application rates for manure, litter, and other process wastewater.
- 4.2.1.4 **Inspect land application equipment for leaks.** The operator must periodically inspect equipment used for land application of manure, litter, or process wastewater.
- 4.2.1.5 **Setback requirements.** Unless the CAFO exercises one of the compliance alternatives provided for in Part a or d of this section, manure, litter, and process wastewater may not be applied 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; 300 feet of Extraordinary Resource Waters (ERWs) or National and Scenic Waterways (NSWs) as defined by the APC&EC Regulation No. 2; 50 feet of property lines; or 500 feet of neighboring occupied buildings.
- a Vegetated buffer compliance alternative. As a compliance alternative, the CAFO may substitute the 100-foot setback with a 35-foot wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited.
 - b The restrictions regarding property lines or neighboring occupied buildings shall not apply if the adjoining property is also approved as a land application site under a permit issued by the Department or if the adjoining property owner consents in writing.
 - c Application of waste shall not be made in areas where the land application of waste is prohibited by Arkansas Department of Health regulations for the protection of public water supplies.
 - d Alternative practices compliance alternative. As a compliance alternative, the CAFO may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by above setbacks.
- 4.2.1.6 **Precipitation Event.** Wastes shall not be land applied to soils that are saturated, frozen, covered with snow, during rain, or when precipitation is imminent (>50% chance of rain).
- 4.2.1.7 **Slope Requirements:** Wastes shall not be land applied to slopes with a gradient greater than 15%. The CAFO may demonstrate that a higher slope is appropriate because implementation of alternative conservation practices or field-specific conditions will provide pollutant reduction equivalent or better than the reductions that would be achieved by a set slope of 15%

4.3 Reserved

4.4 ADDITIONAL REQUIREMENTS AREA

4.4.1 Each CAFO subject to this subpart must implement the following requirements:

4.4.1.1 **Visual inspections.** There must be documented routine visual inspections of the CAFO production area. At a minimum, the following must be visually inspected:

- a **Weekly** inspections of all stormwater diversion devices, runoff diversion structures, and devices channelling contaminated stormwater to the wastewater and manure storage and containment structure;
- b **Daily** inspection of water lines, including drinking water or cooling water lines when the facility is in normal operation;
- c **Weekly** inspections of the manure, litter, and process wastewater impoundments; the inspection will note the level in liquid impoundments as indicated by the depth marker in 4.4.1.2 of this section.

4.4.1.2 **Depth marker.** All open surface liquid impoundments must have a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event.

4.4.1.3 **Corrective actions.** Any deficiencies found as a result of these inspections must be corrected as soon as possible.

4.4.1.4 **Mortality handling.** Mortalities must not be disposed of in any liquid manure or process wastewater system, and must be handled in such a way as to prevent the discharge of pollutants to surface water, unless alternative technologies pursuant to 40 CFR 412.31(a)(2) and approved by the Director are designed to handle mortalities.

4.4.2 **Record keeping requirements.** Each CAFO must maintain on-site the records for a period of five years from the date they are created a complete copy of the information required by 40 CFR 122.21(i)(1) and 40 CFR 122.42(e)(1)(ix) and the records specified in Parts 4.4.2.1 through 4.4.2.6 of this section. The CAFO must make these records available to the Director for review upon request.

4.4.2.1 Records documenting the inspections required under Part 4.4.1.1 of this section;

4.4.2.2 Weekly records of the depth of the manure and process wastewater in the liquid impoundment as indicated by the depth marker under Part 4.4.1.2 of this section;

4.4.2.3 Records documenting any actions taken to correct deficiencies required under Part 4.4.1.3 of this section. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction;

4.4.2.4 Records of mortalities management and practices used by the CAFO to meet the requirements of Part 4.4.1.4 of this section;

4.4.2.5 Records documenting the current design of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity;

4.4.2.6 Records of the date, time, and estimated volume of any overflow.

4.5 RECORDKEEPING REQUIREMENTS FOR THE LAND APPLICATION AREAS

Each CAFO must maintain on-site a copy of its site-specific nutrient management plan. Each CAFO must maintain on-site for a period of five years from the date they are created a complete copy of the information required by 40 CFR 412.4 and 40 CFR 122.42(e)(1)(ix) and the records specified in Parts 4.5.1 through 4.5.10 of this section. The CAFO must make these records available to the Director or his or her designee, for review upon request.

- 4.5.1 Expected crop yields;
- 4.5.2 The date(s) manure, litter, or process waste water is applied to each field;
- 4.5.3 Weather conditions at time of application and for 24 hours prior to and following application;
- 4.5.4 Test methods consistent with University of Arkansas Extension recommendations used to sample and analyze manure, litter, process waste water, and soil.
- 4.5.5 Results from manure, litter, process waste water, and soil sampling;
- 4.5.6 Explanation of the basis for determining manure application rates, as provided in the technical standards established by the Director.
- 4.5.7 Calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater;
- 4.5.8 Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied;
- 4.5.9 The method used to apply the manure, litter, or process wastewater;
- 4.5.10 Date(s) of manure application equipment inspection.

PART 5
NOI and NMP REVIEW & PUBLIC NOTIFICATION PROCESS

- 5.1. For new facilities, public notification requirements for any notice of intent filed with the Department for a general permit for a proposed Concentrated Animal Feeding Operation (CAFO) in Arkansas (ARG59000) are as follows:
- 5.1.1. The applicant shall provide written notice by letter, certified mail, return receipt requested, to the following people:
 - 5.1.1.1. Property owners adjacent to the CAFO production site and property owners adjacent to manure spreading sites;
 - 5.1.1.2. The County Judge of the county where the CAFO production site and any manure spreading site is located;
 - 5.1.1.3. Mayors of incorporated municipalities within ten miles of the CAFO production site; and
 - 5.1.1.4. The superintendent of the school district that serves the CAFO production site.
 - 5.1.2. For the letters referenced in Part 5.1.1, it shall be the applicant's responsibility to retain return receipts for the active life of the permit.
 - 5.1.3. ADEQ shall provide the contents of the written public notice distributed by the applicant in a form letter made available to the applicant.
 - 5.1.4. The form letter referenced in Part 5.1.3 shall include, at a minimum, the following:
 - 5.1.4.1. Notice of the proposed CAFO, including the address of the production site, and the name of the applicant and farm;
 - 5.1.4.2. An explanation of the thirty-day public comment period and the right to comment;
 - 5.1.4.3. The telephone number of a person to contact at ADEQ with questions;
 - 5.1.4.4. Directions to ADEQ's website, including directions regarding how an interested party may submit his or her name to receive electronic notification of notices of intent for coverage under the CAFO general permit; and
 - 5.1.4.5. All letters shall include the certified mail, return receipt number.
 - 5.1.5. The applicant shall publish notice one time of the proposed CAFO in the paper of the largest circulation in the county of the CAFO production site. ADEQ shall determine the form of that notice, and determine the proper paper for publication.
 - 5.1.6. The applicant shall post a sign measuring at least two-feet-by-three-feet (2' x 3') on a public road nearest the entrance to the CAFO production site. The sign shall be clearly legible and conspicuous in such a manner that passersby can clearly see from the public road the applicant's requirements set forth in this section. ADEQ will prescribe the sign's minimum requirements which, at a minimum, will contain the same information as that which ADEQ requires the applicant to publish in the paper. The sign shall be posted prior to submittal of an NOI and shall remain in place until thirty (30) days following ADEQ approval of the NOI and NMP.

5.1.7. Applicants for a CAFO general permit must certify compliance with the public notification requirements in parts 5.1.1-5.1.6 of this section when submitting the Notice of Intent (NOI) and Nutrient Management Plan (NMP) to ADEQ.

5.2. All new, renewal and modified applications for permit coverage under this general permit will be reviewed by ADEQ prior to undergoing the following public notification process:

5.2.1. Upon receipt of Notice of Intent (NOI) and NMP, ADEQ will review the submitted documents to ensure that all permit requirements are fulfilled. ADEQ may request additional information from the CAFO operator if additional information is necessary to complete the NOI, NMP, Disclosure Statement or clarify, modify, or supplement previously submitted material.

5.2.2. Public notice of the receipt of a completed NOI and NMP and of a 30-day public comment period will be published by ADEQ in a newspaper of general circulation. The permittee will be responsible for the cost of publication.

5.2.2.1. During the public comment period, any interested persons may submit written comments and may request a public hearing in accordance with APC&EC Regulation No. 8 to clarify issues involved in the permitting decision.

5.2.2.2. ADEQ will respond to comments received during the public comment period and, if necessary, require the CAFO operator to revise the nutrient management plan.

5.2.2.3. If determined appropriate by ADEQ, a CAFO will be granted coverage under this general permit upon written notification by ADEQ.

5.2.2.4. Comments will only be considered if they regard a specific facility's NOI, NMP, Disclosure Statement, or construction plans, as applicable. Comments on the contents of the General CAFO Permit ARG590000 will not be considered during the public comment period for a specific facility's coverage under this permit.

5.2.3. Any CAFO wishing to modify their NMP must notify the Department of planned changes. If the Department determines the changes are a major modification as specified in 40 CFR 122.62 or Substantial changes as specified in Part 3.2.6 of this general permit, the public notification process outlined above will be followed as appropriate.

**PART 6
GENERAL CONDITIONS**

6.1 Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Federal Clean Water Act and the Arkansas Water and Air Pollution Control Act and is grounds for enforcement action or for requiring a permittee to apply for an individual permit.

6.2 Penalties for Violations of Permit Conditions

The Arkansas Water and Air Pollution Control Act provides that any person who violates any provisions of a permit issued under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment for not more than one (1) year, or a fine of not more than twenty-five thousand dollars (\$25,000) or by both such fine and imprisonment for each day of such violation. Any person who violates any provision of a permit issued under the Act may also be subject to civil penalty in such amount as the court shall find appropriate, not to exceed ten thousand dollars (\$10,000) for each day of such violation. The fact that any such violation may constitute a misdemeanor shall not be a bar to the maintenance of such civil action.

6.3 Permit Actions

In accordance with 40 CFR Parts 122.62 (a)(2) and 124.5, this permit may be reopened for modification or revocation and/or reissuance to require additional monitoring and/or effluent limitations when new information is received that actual or potential exceedance of State water quality criteria and/or narrative criteria are determined to be the result of the permittee's discharge(s) to a relevant water body or a Total Maximum Daily Load (TMDL) is established or revised for the water body that was not available at the time of the permit issuance that would have justified the application of different permit conditions at the time of permit issuance.

Coverage under this permit may be modified, revoked and reissued, or terminated for cause including, but not limited to the following:

- a. Violation of any terms or conditions of this permit; or
- b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
- c. 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.
- d. Failure of the permittee to comply with the provisions of Reg. 9 (Permit fees) as required by Part II.A.8. herein.

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6.4 Toxic Pollutants

If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Reg. 2, as amended, (regulation

establishing water quality standards for surface Waters of the State of Arkansas) or Section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitations on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under Reg. 2 (Arkansas Water Quality Standards), as amended, or Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

6.5 Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

6.6 Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

6.7 State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Clean Water Act.

6.8 Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

6.9 Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

6.10 Permit Fees

The permittee shall comply with all applicable permit fee requirements for wastewater discharge permits as described in Reg. 9 (Regulation for the Fee System for Environmental Permits). Failure to promptly remit all required fees shall be grounds for the Director to initiate action to terminate this permit under the provisions of 40 CFR 122.64 and 124.5 (d), as adopted in Reg. 6 and the provisions of Reg. 8.

PART 7
OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

7.1 Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. The permittee shall provide an adequate operating staff which is duly qualified to carryout operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

7.2 Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. Upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production or discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power for the treatment facility is reduced, is lost, or alternate power supply fails.

7.3 Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment or the water receiving the discharge.

7.4 Bypass of Treatment Facilities

Bypass not exceeding limitation. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation.

7.4.1 Notice

7.4.1.1 Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

7.4.1.2 Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part 9.4 (24-hour notice).

7.4.2 Prohibition of bypass.

7.4.2.1 Bypass is prohibited and the Director may take enforcement action against a permittee for bypass, unless:

- a Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- b There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- c The permittee submitted notices as required by Part 7.4.1.

7.4.2.2 The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in 7.4.2.1.1.

7.5 Upset Conditions

- 7.5.1 Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of Part 7.5.2 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- 7.5.2 Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
- a. An upset occurred and that the permittee can identify the specific cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required by Part 7.4.1; and
 - d. The permittee complied with any remedial measures required by Part 7.3.
- 7.5.3 Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

7.6 Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of waste waters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering the Waters of the State. Written approval for such disposal must be obtained from the ADEQ Director, unless management of the material is contemplated by the Nutrient Management Plan.

7.7 Power Failure

The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators, or retention of inadequately treated effluent.

PART 8
Monitoring and Records**8.1** Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken before the effluent joins or is diluted by any other waste stream, body of water, or substance. All discharges from production areas shall be monitored.

8.2 Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit. The permittee shall calibrate and perform maintenance procedures on all monitoring analytical instrumentation at intervals frequent enough to insure accuracy of measurements and shall insure that both calibration and maintenance activities will be conducted. An adequate analytical quality control program, including the analysis of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

8.3 Penalties for Tampering

The Arkansas Water and Air Pollution Control Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment for not more than one (1) year, or a fine of not more than ten thousand dollars (\$10,000) or by both such fine and imprisonment.

8.4 Reporting of Monitoring Results

Monitoring shall be submitted to the Director at the following address:

Enforcement Branch
~~Water Division~~ Office of Water Quality
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118

If permittee uses outside laboratory facilities for sampling and/or analysis, the name and address of the contract laboratory shall be included on the (Discharge Monitoring Report (DMR)).

8.5 Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the summary report. Such increased frequency shall also be indicated in the summary report.

8.6 Record Contents

Records and monitoring information shall include:

- 8.6.1 The date, exact place, time and methods of sampling or measurements;
- 8.6.2 The individuals(s) who performed the sampling or measurements;
- 8.6.3 The date(s) analyses were performed;
- 8.6.4 The individual(s) who performed the analyses;
- 8.6.5 The analytical techniques or methods used; and
- 8.6.6 The measurements and results of such analyses.

8.7 Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

- 8.7.1 Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- 8.7.2 Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- 8.7.3 Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- 8.7.4 Sample, inspect or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and/or Arkansas Water and Air Pollution Control Act, any substances or parameters at any location.
- 8.7.5 ADEQ will follow the bio-security policy of the permittee or owner of the animals when inspecting and entering the facility.

PART 9 REPORTING REQUIREMENTS

9.1 Planned Changes

The permittee shall give notice and provide plans and specification to the Director for review and approval prior to any planned physical alterations or additions to the permitted facility.

Any change in the facility discharge (including the introduction of any new source or significant discharge or significant changes in the quantity or quality of existing discharges of pollutants) must be reported to the ADEQ. ~~In no case are any~~Any new connections, increased flows, or significant changes in influent quality ~~permitted that~~shall not cause violation of the effluent limitations specified herein.

9.2 Transfers

Facilities that are authorized under this permit, which undergo a change in ownership, facility name, or signatory authorization (i.e., a new cognizant official, responsible person, etc.), must submit a Permit Transfer form to the Director. A Permit Transfer form can be obtained from the General Permits Section of the ~~Water Division~~Office of Water Quality at the following website: http://www.adeg.state.ar.us/water/branch_permits/general_permits/

For an ownership change, the permit transfer form must be submitted a minimum of 30 days prior to the date the transfer to the new operator will take place. The new owner must comply with the existing permit for the facility during the interim period. A Disclosure Form will be required. Transfer of the permit does not relieve the previous permittee from any unpaid permit fees.

9.3 Twenty-four Hour Reporting

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrences of the noncompliance. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

The following shall be included as information which must be reported within 24 hours:

- 9.3.1 Any unanticipated bypass which exceeds any effluent limitation in the permit; and
- 9.3.2 Any upset which exceeds any effluent limitation in the permit.
- 9.3.3 Any unpermitted discharges of process wastewater or other pollutants.

9.4 Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Part and 9.3 at the time monitoring reports are submitted. The reports shall contain the information listed at Part 9.3.

9.5 Changes in Discharge of Toxic Substances for Industrial Discharges

The permittee shall notify the Director as soon as he/she knows or has reason to believe:

- 9.5.1 That any activity has occurred or will occur which would result in the discharge, in a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(1).
- 9.5.2 That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR Part 122.42(a)(2).

~~9.6~~ ~~Reserved~~ Duty to Reapply

If permit coverage was granted prior to the expiration date, permit coverage is automatically continued in accordance with Section 1.7 of Part 1 of this general permit.

~~9.6.7~~ Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

~~9.7.8~~ Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified as follows:

9.8.1 All permit applications shall be signed as follows:

9.8.1.1 For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

- a A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
- b The manager of one or more manufacturing, production, or operation facilities, provided: the manager is authorized to make management decisions which govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information

for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

9.8.1.2 For a partnership or sole proprietorship: by a general partner or proprietor, respectively; or

9.8.1.3 For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

- a The chief executive officer of the agency, or
- b A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

9.8.2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

9.8.2.1. The authorization is made in writing by a person described above;

9.8.2.2. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

9.8.2.3. The written authorization is submitted to the Director.

9.8.3. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

9.8.9 Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2 and APCEC Regulation No. 6, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department of Environmental Quality. As required by the Regulations, the name and address of any permit applicant or permittee, permit applications, permits and effluent data shall not be considered confidential.

9.9.10 Penalties for Falsification of Reports

The Arkansas Water and Air Pollution Control Act provides that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan

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or other document filed or required to be maintained under this permit shall be subject to civil and/or criminal penalties specified in Part 3.2. under the authority of the Arkansas Water and Air Pollution Control Act.

**PART 10
DEFINITIONS**

All definitions contained in Section 502 of the Clean Water Act shall apply to this permit and are incorporated herein by reference. Additional definitions of words or phrases used in this permit are as follows:

- 10.1 "Act": the Clean Water Act, Public Law 95-217 (33.U.S.C.1251et seq.) as amended.
- 10.2 "ADEQ" the Arkansas Department of Environmental Quality.
- 10.3 "Administrator": the Administrator of the U.S. Environmental Protection Agency.
- 10.4 "Agricultural stormwater discharge" as a discharge composed entirely of stormwater, as defined in § 122.26(a)(13), from a land area upon which manure or wastewater has been applied in accordance with proper agricultural practices, including land application of manure or wastewater in accordance with either a nitrogen-based or, as required, a phosphorus-based manure application rate. In addition, as noted, the proposed effluent guidelines included technology-based requirements for a CAFO's land application areas that were based on the CAFO's use of proper agricultural practices. (See 66 FR at 3029–32). Any dry weather discharge of manure or process wastewater resulting from its application to land area under the control of a CAFO would not be considered an agricultural storm water discharge and would thus be subject to Clean Water Act requirements.
- 10.5 "Animal feeding operation" ("AFO") means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:
 - 1. Animals (other than aquatic 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
 - 2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
- 10.6 "APCEC": the Arkansas Pollution Control and Ecology Commission.
- 10.7 "Applicable effluent standards and limitations": all State and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.
- 10.8 "Applicable water quality standards": all water quality standards to which a discharge is subject under the federal Clean Water Act and which have been (a) approved or permitted to remain in effect by the Administrator following submission to the Administrator pursuant to Section 303(a) of the Act, or (b) promulgated by the Director pursuant to Section 303(b) or 303(c) of the Act, and standards promulgated under Reg. 2, as amended, (regulation establishing water quality standards for surface Waters of the State of Arkansas).
- 10.9 "Bypass": the intentional diversion of waste streams from any portion of a treatment facility.
- 10.10 "Concentrated animal feeding operation" ("CAFO") means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this Part, or that is designated as a CAFO in accordance with 40 CFR 122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

Table of Regulatory Definitions of Large CAFOs, Medium CAFO, and Small CAFOs

A **Large CAFO** confines at least the number of animals described in the table below.

A **Medium CAFO** falls within the size range in the table below and either:

- has a manmade ditch or pipe that carries manure or wastewater to surface water; **or**

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- the animals come into contact with surface water that passes through the area where they're confined.

If an operation is found to be a significant contributor of pollutants, the permitting authority may designate a medium-sized facility as a CAFO.

A **Small CAFO** confines fewer than the number of animals listed in the table **and** has been designated as a CAFO by the permitting authority as a significant contributor of pollutants.

Animal Sector	Size Thresholds (number of animals)		
	Large CAFOs	Medium CAFOs	Small CAFOs
Subpart A			
sheep or lambs	10,000 or more	3,000 - 9,999	less than 3,000
horses	500 or more	150 - 499	less than 150
Subpart B			
ducks (other than a liquid manure handling systems)	30,000 or more	10,000 - 29,999	less than 10,000
ducks (liquid manure handling systems)	5,000 or more	1,500 - 4,999	less than 1,500
Subpart C			
cattle or cow/calf pairs	1,000 or more	300 - 999	less than 300
mature dairy cattle	700 or more	200 - 699	less than 200
Subpart D			
veal calves	1,000 or more	300 - 999	less than 300
swine (weighing over 55 pounds)	2,500 or more	750 - 2,499	less than 750
swine (weighing less than 55 pounds)	10,000 or more	3,000 - 9,999	less than 3,000
turkeys	55,000 or more	16,500 - 54,999	less than 16,500
laying hens or broilers (liquid manure handling systems)	30,000 or more	9,000 - 29,999	less than 9,000
chickens other than laying hens (other than a liquid manure handling systems)	125,000 or more	37,500 - 124,999	less than 37,500
laying hens (other than a liquid manure handling systems)	82,000 or more	25,000 - 81,999	less than 25,000

- 10.11 **"Daily Maximum"**: discharge limitation means the highest allowable "daily discharge" during the calendar month.
- 10.12 **"Department"**: the Arkansas Department of Environmental Quality (ADEQ).
- 10.13 **"Director"**: the Director of the Arkansas Department of Environmental Quality.
- 10.14 **"Discharge"** means a discharge of any wastes in any manner which directly or indirectly permits such wastes to reach any of the Waters of the State.
- 10.15 **"Fecal Coliform"** means the bacterial count at 40 CFR 136.3 in Table 1A, which also cites the approved methods of analysis.
- 10.16 **"Grab sample"**: an individual sample collected in less than 15 minutes in conjunction with an

instantaneous flow measurement.

- 10.17 **“Land application area”** means land under the control of an AFO operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.
- 10.18 **“Manure”** is defined to include manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.
- 10.19 **“mg/l”**: milligrams per liter; it is essentially equivalent to parts per million in dilute aqueous solutions.
- 10.20 **“Monitoring and Reporting”**: When a permit becomes effective, monitoring requirements are of the immediate period of the permit effective date. Where the monitoring requirement for an effluent characteristic is Monthly or more frequently, the Discharge Monitoring Report shall be submitted within 30 days following the sampling.
- 10.21 **“National Pollutant Discharge Elimination System (NPDES)”**: the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under section 307, 402, 318 and 405 of the Clean Water Act.
- 10.22 **“New source”** means any building, structure, facility, or installation from which there is or may be a “discharge of pollutants,” the construction of which commenced:
1. After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or
 2. After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.
- 10.23 **“Operator”** for the purpose of this permit, means any person (an individual, association, partnership, corporation, municipality, state or federal agency) who has the primary management and ultimate decision-making responsibility over the operation of a facility or activity. The operator is responsible for ensuring compliance with all applicable environmental regulations and conditions.
- 10.24 **“Overflow”** means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or stormwater can be contained by the structure.
- 10.25 **“Point source”** means any discernible, confined and discrete conveyance from which pollutants are or may be discharged. Point source discharges of storm water result from structures which increase the imperviousness of the ground or which acts to collect runoff, with runoff being conveyed along the resulting drainage or grading pattern.
- 10.26 **“Pollutant”** means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
- 10.27 **“Pollution”** means such contamination or other alteration of the physical, chemical, or biological properties of any Waters of the State, or such discharge of any liquid, gaseous, or solid substance in any Waters of the State as will, or is likely to, render the waters harmful, detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish, or other aquatic life.
- 10.28 **“Process wastewater”** means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other 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 any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

- 10.29 **"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 confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, 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 stormwater. 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.
- 10.30 **"Severe property damage"**: substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in productions.
- 10.31 **"Ten (10)-year, 24-hour rainfall event, 25-year, 24-hour rainfall event, and 100-year, 24-hour rainfall event"** mean precipitation events with a probable recurrence interval of once in ten years, or twenty five years, or one hundred years, respectively, as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the State," May, 1961, or equivalent regional or State rainfall probability information developed from this source.
- 10.32 **"Total Suspended Solids (TSS)"**: the amount of solid material suspended in water, commonly expressed as a concentration, in terms of mg/l.
- 10.33 **"Treatment works"** means any devices and systems used in storage, treatment, recycling, and reclamation of municipal sewage and industrial wastes, of a liquid nature to implement section 201 of the Act, or necessary to recycle reuse water at the most economic cost over the estimated life of the works, including intercepting sewers, sewage collection systems, pumping, power and other equipment, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities, and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.
- 10.34 **"Upset"**: an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, lack of preventive maintenance, or careless or improper operations.
- 10.35 **"Waters of the State"** means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.

FACT SHEET FOR DRAFT GENERAL PERMIT NO. ARG590000, CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO) IN THE STATE OF ARKANSAS

Information in this part is organized as follows:

1. Background
2. Major Changes from Previous Permit
3. Permit Coverage
 - 3.1. Notification Requirements
 - 3.2. Individual Permits
4. Best Conventional Pollutant Control Technology (BCT), Best Available Technology Economically Achievable (BAT) and New Source Performance Standards
5. Water Quality Requirements
6. Permit Limits and Basis
7. Monitoring and Reporting Requirements
8. Other Conditions
9. Economic Impact
10. Sources
11. Public Notice

1. Background

The previous permit became effective on November 1, 2011 and expires on October 31, 2016. This is a renewal permit.

The State of Arkansas has been authorized by the U. S. Environmental Protection Agency to administer the National Pollutant Discharge Elimination System (NPDES) Program in Arkansas, including the issuance of general permits to categories of dischargers under the provisions of 40 CFR 122.28, as adopted by reference in Arkansas Pollution Control and Ecology Commission Regulation (Reg.) 6.104. Under this authority, ADEQ may issue a single general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollution control measures. Specifically, in accordance with 40 CFR 122.28, the ADEQ is authorized to issue a general NPDES permit if there are a number of point sources operating in a geographic area that:

- 1.1. involve the same or substantially similar types of operations;
- 1.2. discharge the same types of wastes;
- 1.3. require the same effluent limitations or operating conditions;
- 1.4. require the same or similar monitoring requirements; and
- 1.5. in the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

40 CFR 122.23(h) details specific procedures for CAFOs seeking coverage under a general permit. These requirements have been met with this general permit.

The violation of any condition of a general permit constitutes a violation of the Arkansas Water and Air Pollution Control Act (Ark. Code Ann. § 8-4-101 *et seq.*) and may subject the discharger to the penalties and revocation of coverage under the general permit. Upon issuance of the final general permit for this type of discharge, operators that are considered

qualified for coverage under this general permit must submit a written notice of intent to the Director for coverage under the general permit.

2. Major Changes from Previous Permit

- 2.1. Exclusion of coverage for new CAFOs within the watershed of the Buffalo National River subject to Arkansas Pollution and Ecology Commission (APC&EC) Regulation 6.602. (Part 1.4.6).
- 2.2. Submittal of renewal NOI and NMP within 90 days after the issuance date of the new permit. The submittal deadline allows for adequate time to review the NOI and NMP as well as allow the public notification process to occur. (Part 1.7.1).
- 2.3. Clarify construction requirements in this General Permit. (Part 1.9) These construction requirements are for new or revised CAFOs. (Part 1.5.1.5).
- 2.4. Public Notice requirements were updated based on APC&EC Regulation 6.207. (Part 5).

3. Permit Coverage

This permit covers any operation that meets the definition of a CAFO under Part 10.9 of the permit and discharges pollutants to Waters of the State. Once an operation is defined as a CAFO, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal. All CAFOs, unless otherwise excluded from general permit coverage, have the opportunity to apply for permit coverage under this permit.

3.1. Notification Requirements

- 3.1.1. In order to discharge under this general permit, operators of CAFOs located within the State of Arkansas must submit the following items to the Department:

- 3.1.1.1. NOI and Nutrient Management Plan;
- 3.1.1.2. a Disclosure Form as required by APC&EC Regulation. 8.204, and;
- 3.1.1.3. a permit fee of \$200 as allowed by APC&EC Regulation 9.
- 3.1.1.4. ADEQ Form 1, if the facility is proposing construction, such that APC&EC Regulation 6.202 may be complied with.

3.2. Buffalo River Watershed Exclusion

New coverage of medium or large swine CAFOs located within the watershed of the Buffalo National River is prohibited for the life of this permit. APC&EC Regulation 6.602 prohibits coverage under a general permit for new CAFOs or modifications that increases the number of animals permitted at a facility for a period of five years from the effective date of the regulation. After the five year period, rulemaking will be initiated to either delete Reg. 6.602(E) or delete the entirety of Reg. 6.602. During this period, a study is being conducted by the University of Arkansas Division of Agricultural Big Creek Research and Extension Team to determine the potential impact of CAFOs operations on water quality in the watershed. The conclusions of this study will be considered during the rulemaking process required for Reg. 6.602.

4. **Best Conventional Pollutant Control Technology (BCT) and Best Available Technology Economically Achievable (BAT)**

Two types of technology-based effluent limitations must be included in the permits proposed here. With regard to conventional pollutants, i.e., pH, BOD, oil and grease, and TSS, CWA section 301 (b)(1)(E) requires effluent limitations based on "best conventional pollution control technology" (BCT). With regard to non-conventional and toxic pollutants, CWA section 301(b)(2)(A), (C), and (D) require effluent limitations based on "best available pollution control technology economically achievable" (BAT), a standard which generally represents the best performing existing technology in an industrial category or subcategory. BAT and BCT effluent limitations may never be less stringent than corresponding effluent limitations based on best practicable control technology (BPT), a standard applicable to similar discharges prior to March 31, 1989 under CWA 301(b)(1)(A).

Frequently, EPA adopts nationally applicable guidelines identifying the BPT, BCT, and BAT standards to which specific industrial categories and subcategories are subject. BAT standards have been applied to all facilities which may be covered under this general permit, unless applicable New Source Performance Standards (NSPS) have been developed. In all subparts eligible for coverage under this general permit, with the exception of Subpart D CAFOs, NSPS limits and requirements are equivalent to BAT limits and requirements. For Subpart D, those facilities subject to NSPS have more stringent limitations than those not subject to NSPS.

5. **Water Quality Requirements**

In accordance with 40 CFR 122.44(d), the Department is required to include any requirements necessary to achieve State Water Quality Standards, as established under Section 303 of the Clean Water Act. Standards in this permit have been included for discharges to both water quality impaired (303(d) listed) and waterbodies with Total Maximum Daily Loads of pollutant(s).

6. **Permit Limits and Basis**

This general permit upholds the Effluent Limitation Guidelines for CAFOs Subpart A, C and D as detailed in 40 CFR 412 and 40 CFR 122. The Department believes no further effluent limitations are needed for these subcategories in order to be protective of water quality as expressed in APC&EC Regulation No. 2.

7. **Monitoring and Reporting Requirements**

Facilities covered under this permit should not have frequent monitoring. Monitoring is required every time there is a discharge (with the exception of agricultural stormwater discharges from land application areas where manure and process water have been land applied in accordance with an approved Nutrient Management Plan). Should a discharge occur, a permittee must sample and analyze all discharges. Samples must, at a minimum, be analyzed for the following parameters: total nitrogen, nitrate nitrogen, ammonia nitrogen, total phosphorus, fecal coliform bacteria, five-day biochemical oxygen demand (BOD₅), total suspended solids, and pH. The discharge must be analyzed in accordance with approved EPA methods for water analysis listed in 40 CFR Part 136. A certified laboratory must analyze the

samples. These monitoring requirements are based upon the best professional judgment of the permit writer.

Monitoring results must be submitted to the Department within 30 days of a discharge. Oral 24-hour reporting is required for any by-pass or upset or any noncompliance which may endanger health or the environment.

Additional annual reporting requirements are found in Part 3 of the permit. These reporting requirements are in accordance with Nutrient Management Plan requirements in the federal CAFO rule.

8. **Other Conditions**

8.1. Geographic Area and Covered Facilities

The general permit, when issued, will authorize discharges from CAFOs throughout the State of Arkansas to all receiving waters, given that the CAFO is otherwise eligible for permit coverage.

8.2. Expiration Date

This general permit will expire 5 years from the effective date of the permit. Once expired, this general permit will continue in effect until such time that the permit is renewed or a new permit is issued.

8.3. Standard Conditions

The conditions applicable to all NPDES permits under the provisions of 40 CFR 122.41 have been included in this General Permit, as appropriate.

8.4. Continuation of Expired Permit

An expired general permit continues in force and effect until a new general permit is issued. If this permit is not re-issued or replaced prior to the expiration date, it will be administratively continued in accordance with APC&EC Regulation No. 8 and remain in force and effect. If permit coverage was granted prior to the expiration date, permit coverage is automatically continued until the earliest of:

- 8.4.1. Coverage being authorized under a reissued permit or a replacement of this permit following your submittal of a complete renewal NOI and NMP within 90 days after the issuance date of the new permit; or
- 8.4.2. A formal decision by ADEQ to grant a permittee's request for termination of permit coverage; or
- 8.4.3. The effective date of a final permitting decision to issue or deny of an individual permit for the facility's discharges; or
- 8.4.4. A formal permit decision by ADEQ not to reissue this general permit, at which time ADEQ will identify a reasonable time period for covered dischargers to seek coverage under an alternative general permit or an individual permit. Coverage under this permit will cease at the end of this time period.

9. **Economic Impact**

The Arkansas CAFO General Permit ARG590000 incorporates the 2008 CAFO rule from Federal Regulations. The permit is also in compliance with state-level regulations (APC&EC Regulation No. 2, 5, 6, 8, and 9) concerning the permitting process.

The Arkansas Department of Environmental Quality has not added any requirements not specifically outlined in the State and Federal Regulations. The CAFO General Permit does not incorporate any requirements not in the federal or state regulations. The additional public notification requirements will have an economic impact; however, the public notification process is required by APC&EC Regulation 6.207. The construction requirements will not have an economic impact for new or revised facilities.

The permit fee of \$200 is allowed by Arkansas Pollution Control and Ecology Commission Regulation No. 9. The public notification requirements and in-depth review of nutrient management plans required by federal regulation give a burden of greater than any other general permit issued by the Department.

10. **Sources**

- 10.1. APC&EC Regulation No. 2.
- 10.2. APC&EC Regulation No. 5.
- 10.3. APC&EC Regulation No. 6.
- 10.4. APC&EC Regulation No. 8.
- 10.5. APC&EC Regulation No. 9.
- 10.6. 40 CFR Parts 122, 123, 124, 125 and 412, as adopted by APC&EC Regulation No. 6.
- 10.7. Recommended Standards for Wastewater Facilities, 2014 Edition.

11. **Antidegradation Review**

The antidegradation policy in APC&EC Regulation No. 2 requires that existing instream water uses and the level of water quality necessary to protect the existing uses to be maintained and protected. The activities authorized under NPDES General Permit ARG590000 are not expected to result in degradation. A study is currently being conducted to determine the impacts of CAFO activities in the Buffalo National River Watershed.

NPDES General Permit ARG590000 prohibits discharges from the production area with the exception for discharges whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained ~~to-at-a minimum contain~~to contain at a minimum all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into Waters of the State. ~~New facilities are required to model, showing no discharge over a previous 100 years.~~

NPDES General Permit ARG590000 requires waste to be applied on land at rates to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater. A site specific Nutrient Management Plan (NMP) is required to be developed for land application and mortality management when applying for coverage under the general permit. The developed NMP shall be developed in accordance with the Arkansas NRCS

Conservation Service Practice Standard Code 590 (Nutrient Management), including the Arkansas Phosphorus Index, 2010 revision. The terms of the NMP are incorporated into the general permit. Discharges resulting from land application activities are prohibited by the permit, with the exception of agricultural storm water discharge. The general permit prohibits land application activities during precipitation events as defined in the general permit.

12. **Public Notice**

The public notice describes the procedures for the formulation of final determinations and shall provide for a public comment period of 30 days from the publication of notice. During this period, any interested persons may submit written comments on the permit to clarify issues involved in the permitting decision. A copy of the permit, fact sheet, and public notice will be sent via email to the Corps of Engineers, the Regional Director of the U.S. Fish and Wildlife Service, the Department of Arkansas Heritage, the EPA, and the Arkansas Department of Health.