

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCYPART 124—STATE PROGRAM ELEMENTS
NECESSARY FOR PARTICIPATION IN
THE NATIONAL POLLUTANT DIS-
CHARGE ELIMINATION SYSTEMPART 125—NATIONAL POLLUTANT
DISCHARGE ELIMINATION SYSTEMForm and Guidelines Regarding
Agricultural and Silvicultural Activities

Notice was published in the FEDERAL REGISTER issue of December 5, 1972, (37 FR 25898) that the Environmental Protection Agency was giving consideration to proposed forms and guidelines for the acquisition of information from owners and operators of point sources. The proposed forms and accompanying instructions described, pursuant to the authority contained in section 304(h) (1) of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972, (86 Stat. 816; 33 U.S.C.A. 1251 et. seq. (1972)) (hereinafter referred to as the "Act"), requirements for the acquisition of information from owners and operators of point sources subject to the National Pollutant Discharge Elimination System.

The period for comment for one of the short forms, Short Form B—Agriculture, Forestry and Fishing, was extended an additional 30 days until January 20, 1973. See the notice of extension of period for comment published in the FEDERAL REGISTER on Friday, December 29, 1972, 37 FR 28765. During the extended comment period, the Agency sought and received information, statistics, and advice as to (1) the numbers and kinds of agriculture, forestry, and fish production activities covered by Short Form B; (2) the nature, size, and frequency of polluting discharges, if any, from such activities; and, (3) any categories of dischargers (including any classes, types, and sizes within any category) that should be excluded from NPDES application and filing requirements.

Statistical information and advice was provided by the United States Department of Agriculture, and U.S. Department of the Interior, and from owners and operators of farming and agricultural operations. Meetings were held with agricultural experts and with State officials from the States of California, Illinois, Iowa, Missouri, Nebraska, Texas, and Wisconsin. Agricultural and environmental groups were consulted.

On the basis of the information, statistics, and advice received, the Environmental Protection Agency revised the proposals and published them in the FEDERAL REGISTER of May 3, 1973, for a 30-day comment period. The Agency proposed to exclude for the present time certain categories and classes of agricultural and silvicultural point sources from the requirements of the National Pollutant Discharge Elimination System. Authority for such exclusions rests with Administrator's discretion under section 402(a) (1) of the Act to issue permits.

In addition, the Act and the legislative history indicate clearly that Congress regarded discharges from agricultural and silvicultural activities as problems to be dealt with primarily through the exercise of authorities concerning non-point sources and that the Administrator would have discretion to distinguish among categories and sizes of agricultural sources. The basis for the exclusions is that the pollution problems caused by the excluded categories of point sources are minor in relation to the administrative problem of processing vast numbers of agricultural discharge application forms.

Comments received during the 30-day period following the May 3 publication have been considered and appropriate revisions made to the permit application form and related regulations. The regulations reflect the policies and rationales described in 1. and 2. below.

1. *General exclusion of discharges from agricultural and silvicultural activities.* In the United States, there are three million more farmers engaged in a variety of agricultural and silvicultural activities. In connection with crop production, some water from most farms is returned to navigable waters, as the term "navigable waters" is defined in the Act. The expenditure in time, dollars, and resources necessary to process applications from every small farmer subject to NPDES requirements would be disproportionate to the water quality benefits obtained. In order to prevent the diversion of the Agency's limited resources from the larger, significant point sources of pollution, the amendments proposed herein exclude the smaller, insignificant agricultural and silvicultural discharges (including minor irrigation return flow discharges and runoff from fields, orchards, and crop and forest lands) from the requirements of the NPDES.

2. *Exceptions from general exclusion.* The following categories and classes of agricultural or silvicultural point sources are or could be significant sources of pollution and therefore will be subject to NPDES requirements.

a. *Animal confinement facilities.* The regulations provide that large animal feedlots and holding facilities will remain subject to NPDES requirements. By the inclusion of the term "concentrated animal feeding operations" in section 502 (14) of the Act, Congress indicated its intent that these sources of agricultural pollution be controlled through the NPDES permit program. Recent statistics indicate, however, that there are 1,914,945 concentrated animal feeding operations in the United States. Of these, about 180,000 are cattle feedlots. Again, there are simply too many facilities to make inclusion in the NPDES administratively manageable.

Exclusion of all feedlots, however, is improper as the build-up of solid and liquid wastes resulting from the concentration of animals in confined production facilities represents a significant source of pollution. Accordingly, on the basis of information and statistics received, pollution potential, and adminis-

trative manageability, the Agency has attempted to set cutoff points above which animal production facilities would be subject to NPDES requirements. These numbers refer to the number of animals that are contained or have been contained at any time in the previous 12 months.

Further, several comments pointed out that certain types of operations, such as a fair grounds, might contain these numbers of animals, but only for a brief period during the year. Therefore, an additional criterion has been added, that the cutoff number of animals be held for a total of 30 days or more in order for the facility to be included in the NPDES.

(1) *Slaughter and feeder cattle; 1,000 head or more.* The owner or operator of any facility with 1,000 or more slaughter and/or feeder cattle must apply for an NPDES permit. In cattle operations particularly, a few large operations tend to dominate the market. In 1970, for example, one percent of the cattle feedlots produced 55 percent of the cattle marketed. Nationwide, there are about 2,500 lots with 1,000 or more head of cattle. These 2,500 lots market almost 70 percent of the feed cattle. A reduction of the cutoff below 1,000 head would dramatically increase the number of applications.

(2) *Dairy cattle. 700 head or more.* Any dairy or facility with 700 or more dairy cattle is subject to the NPDES. The figure of 700 head includes milkers, pregnant heifers, and dry mature cows, but not calves. There are about 125 dairy operations with 700 head or more. As in the case of feed cattle, the number of applications increases significantly below the cutoff of 700 head.

(3) *Swine over 55 pounds. 2,500 or more.* The figure of 2,500 swine is limited to swine weighing over 55 pounds. The cutoff figure should result in applications from about 800 facilities. Although there are many thousands of smaller feed lots for swine, the proposed cutoff of 2,500 will cover the facilities which present the greatest potential for pollution control while limiting the number of applications to a manageable quantity.

(4) *Sheep. 10,000 head or more.* Facilities for holding or feeding sheep are required to file for an NPDES permit if the facility contains 10,000 or more sheep. Statistics indicate that there are about 100 feedlots in the United States with 10,000 or more sheep. Smaller feedlots present less potential for pollution problems as sheep manure is particularly marketable to gardeners and is therefore less likely to be discharged or disposed of as waste.

(5) *Turkeys. 55,000 or more.* Turkey lots which contain more than 55,000 birds will be required to apply for an NPDES permit. Generally, only "open lot" turkey operations will be covered as in-house turkey facilities are normally dry operations and have no liquid wastes. An estimated 300 turkey lots will be covered by the 55,000 cutoff.

(6) *Laying hens and broilers. Continuous overflow watering. 100,000 or more—(7) Laying hens and broilers.*

Liquid manure handling system. 30,000 or more. Owners or operators of facilities which utilize continuous overflow watering systems will be required to apply for an NPDES permit if they contain 100,000 or more laying hens or broilers. Owners or operators of facilities which utilize liquid manure handling systems will be required to apply for an NPDES permit if they contain 30,000 or more laying hens or broilers. The cited levels will include most of the commercial operations and major facilities utilizing "wet" systems, about 100 of each type. These cutoffs will include almost all egg and chicken production facilities with potential for water pollution problems.

Most broilers, laying hens, and breeding chickens are kept on litter, or in cages with dry litter floors and normally have no waste water. These dry operations account for the vast majority of commercial poultry operations in the country. Where the dry manure and litter is not disposed of in navigable waters, dry operations, for lack of a discharge subject to the Act, will not be subject to NPDES requirements.

(8) Ducks. 5,000 or more. All duck farm operations with more than 5,000 ducks will be required to apply for an NPDES permit. The estimated 80 duck farms with 5,000 or more ducks represent most of the commercial duck operations in the United States. Unlike wastes from most other animal production operations, wastes from duck farms normally require biological treatment. Because of the relatively small number of potential applicants and because the discharges represent a treatment problem of the kind the NPDES is designed to regulate, complete coverage of commercial duck production operations is warranted.

(9) Combinations of animals. Often a facility contains more than one type of animal. Although such a facility may not contain any one type in the cutoff quantity given above, the combined quantities may present a significant pollution problem. Therefore, application for a permit for a combined facility must be made if the following calculation equals or exceeds 1,000: (1) Multiply the number of animals of each type by the multiplier given below for that type; (2) Add the products of these multiplications. The multipliers are:

- (a) slaughter and feeder cattle..... 1.0
- (b) mature dairy cattle..... 1.4
- (c) swine over 55 pounds..... 0.4
- (d) sheep 0.1

(Multipliers are only given for the types of animals which are commonly combined.)

For example, if a facility presently holds 600 slaughter and feeder cattle, 200 mature dairy cattle, and 500 swine over 55 pounds, the calculation is as follows:

Number of Animals	Times	Multiplier
600 Slaughter and Feeder Cattle.....	X	1.0=600
200 Mature Dairy Cattle.....	X	1.4=280
500 Swine over 55 pounds.....	X	0.4=200
Total.....		1,080

Since the calculated total exceeds 1,000, an application for an NPDES permit must be filed in this case.

Two or more animal pens, feedlots, or other animal confinement facilities are considered to be a single facility where they are adjacent to each other or where they utilize a common area or system for the disposal of wastes. For example, neighboring pens separated by a road but using a common disposal system, which are owned by the same person or company, and which hold 600 slaughter cattle and 500 dairy cattle would be subject to NPDES requirements.

b. Fish and animal production facilities. Although, like non-aquatic animals, fish are concentrated for purposes of feeding and marketing, fish operations are not easily categorized according to the number of fish contained within a particular operation. Fish and aquatic animal production operations are proposed to be excluded herein on the basis of the method of confinement or the continuity of the discharge.

Present data indicate that closed ponds, which usually discharge less than 30 days per year, or only during periods of excess runoff, tend to have a minimal impact upon water quality. On the other hand, where fish or other aquatic animals are concentrated in raceways or similar structures which provide a continuous flow of water, the addition of food and wastes to the water flow is analogous to an industry which takes in water for processing and subsequently discharges the water laden with wastes. If, however, discharges occur infrequently, the adverse impact from this type of facility is greatly reduced. Therefore, where either a pond or raceway discharges on less than 30 days per year, no permit is required for that discharge.

Further, some small facilities, such as "fish out" facilities, farm ponds and small raceways, may discharge more frequently than on 30 days per year but still not be considered intensive fish farming. For this reason, where the discharge occurs on more than 30 days per year, but annual production is less than 20,000 pounds, no discharge permit is required at this time.

Facilities which contain any species of aquatic animal not native to the United States and discharge into navigable waters are subject to NPDES requirements regardless of the continuity of flow or the size of the facility. There is a threat that foreign pathogens or parasites harmful to our native ecosystems or to man might be introduced through discharges from these facilities. For this reason, operations which contain non-native aquatic animal species, and discharge into navigable waters must apply for an NPDES permit. Non-native species of fish are defined in "Special Publication No. 6" of the American Fisheries Society entitled, "A List of Common and Scientific Names of Fishes from the U.S. and Canada." Carp, goldfish, and brown trout, although included in the American Fisheries Society List, are excluded from the category of non-native species of fish due to their widespread distribution and

relatively long residence time in the United States.

c. Irrigation activities. NPDES requirements apply to discharges of irrigation return flow (such as tailwater, tile drainage, surfaced groundwater flow or bypass water), operated by public or private organizations or individuals, if: (1) there is a point source of discharge (e.g., a pipe, ditch, or other defined or discrete conveyance, whether natural or artificial) and; (2) the return flow is from land areas of more than 3,000 contiguous acres, or 3,000 non-contiguous acres which use the same drainage system.

It is the individual or organization who actually has control of or responsibility for the discharge of irrigation return flow who must apply for the permit. For example, if water is supplied by an organization but the discharge of return flow to navigable waters is controlled by an individual who has more than 3,000 acres under irrigation, it is the individual who must apply for a permit. On the other hand, if an irrigation organization supplies and controls the irrigation return flow from a total of 3,000 acres to navigable waters, the organization must apply for a permit, even though one individual may be supplied with water for 3,000 acres or more.

The land serviced by the 1100 irrigation organizations which provide water to 3,000 or more acres represents 80 percent of all acreage irrigated by such organizations. If waters from an irrigation system enter navigable waters from diffuse sources, then no discharge permit is required as there is no point source of discharge.

d. Identified point sources. Although the general exclusion may remove large numbers of infrequent and insignificant discharges from the NPDES permit program at this time, certain other agricultural dischargers, not included within the categories listed above, may or could be significant sources of pollution.

If an excluded agricultural or silvicultural point source is a significant contributor of pollution, however, the Environmental Protection Agency or the water pollution control agency for the State or interstate area may identify the source as not included within the exclusion. If a point source is so identified, the owner or operator must comply with all NPDES filing and application requirements.

3. Requirements of section 301(a) of the Act. Although the excluded categories are thus relieved at this time from complying with the requirements of section 402 of the Act and regulations issued thereunder, point sources within such categories remain subject to all other applicable provisions of Federal law and the Act, including, in particular, section 301(a) of the Act which provides that discharges from any point source are unlawful "except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404." Therefore, although owners and operators of the excluded point sources are not required to apply for or obtain an NPDES-permit, they must comply with the other requirements of the

Act including any applicable effluent guidelines, standards of performance, toxic effluent standards or prohibitions, or pretreatment standards.

4. *Short Form B—Agriculture.* Also promulgated herein is a revised Short Form B for those agricultural discharges which are not excluded herein from NPDES filing requirements. The revised form is designed to provide basic information sufficient to permit the application of standards and guidelines under the Act.

Certain information on Short Form B is to be provided by all agricultural applicants. Other sections are to be completed on the basis of type of facility or activity. Special sections for this purpose are provided for animal confinement and feeding facilities, for fish and aquatic animal production facilities, and for irrigation return flow discharges from point sources.

The interim standards analytical methods and instructions provided in Table I of Short Form B shall be used by applicants pursuant to the instructions provided until the promulgation of guidelines under section 304(g) of the Act. Section 304(g) requires, within one hundred and eighty days of enactment, guidelines establishing test procedures that shall be used to analyze pollutants described in any permit application pursuant to section 402 of the Act. Following promulgation of the 304(g) guidelines, applicants for section 402 permits shall utilize any applicable test procedures contained in those guidelines for the analysis of pollutants reported in any NPDES application or reporting form, including Short Form B.

5. *Filing Instructions for Short Form B.* All owners and operators of agricultural point sources subject to the Act (other than those owners and operators who have submitted complete Refuse Act applications) must file Short Form B as soon as possible. Persons filing a Short Form B with the Environmental Protection Agency will be required to pay a filing fee of \$10. The fee is assessed per application and not per discharge. For example, even though a facility filing a Short Form B may have four discharges, the applicant pays only \$10.

The form can be completed in most cases by an applicant in a short period of time. In cases involving irrigation return flow, a full determination of the impact of the discharge on water quality may require further information and a more detailed analysis of the discharge. The Regional Administrator or his representatives or, in the case of States participating in the NPDES, the State Director or his representatives, will determine on a case-by-case basis whether further information is necessary before the permit can be issued. In all such cases, the applicant will be notified and advised as to further information requirements. The Regional Administrator or the State Director may also arrange for a visit to the site in order to better determine the nature of the discharges.

6. *Revisions to the proposal—Revisions to the regulations.* There are few significant changes from the May 3 version

of Short Form B and the related regulations; most of the revisions consist of clarifications. One additional criterion was added for inclusion of animal feedlots, that the number of animals confined be held for 30 days or more. This addition was made in response to a comment that facilities such as fair grounds may contain a large number of animals, but for only a brief period of time each year, and therefore they should not necessarily require a permit. Any such facility which does pose a significant pollution problem can be required to apply at the discretion of the Regional Administrator or the State Director.

Probably the clarification most requested by commenters concerns responsibility for the permit where irrigation organizations supply water but individual farmers control the discharge of return flow; in such cases, the farmer must apply. Conversely, where an individual farmer receives water for 3,000 or more acres of land, but the supplying organization controls the discharge of return flow, the organization must apply for a permit. Also, it was clarified that the 3,000 acre cutoff for irrigation operations applies also to non-contiguous acres using the same drainage system.

It has been clarified that the exclusion provisions do not prohibit any owner or operator of an excluded category of point source discharge from voluntarily applying for a permit, if he is in doubt as to his obligation.

Revisions to the form. The instructions on "Who must apply" were revised to limit applicants to those holding the given number of animals for 30 days or more, as explained above.

Short Form B is to be used by the Administrator of the Environmental Protection Agency and by approved State programs as a principal means of acquiring information from owners and operators of agricultural point sources. Short Form B is included within the meaning of the term "NPDES application form" as the term is used in the guidelines published under section 304(h)(2) of the Act.

Because of the importance of making the NPDES form and related regulations available as soon as possible to owners and operators of agricultural point sources of discharge subject to the NPDES, the Administrator finds good cause to declare that these regulations and the form whose Notice of Availability follows immediately hereafter are effective immediately.

Dated: June 29, 1973.

ROBERT W. FRI,
Acting Administrator.

ACQUISITION OF INFORMATION FROM OWNERS AND OPERATORS OF POINT SOURCES

AVAILABILITY OF FORMS

Notice was published in the FEDERAL REGISTER issue of May 3, 1973, (38 FR 10960) that the Environmental Protection Agency was giving consideration to a proposed form for the acquisition of information from owners and operators of agricultural point sources of discharge. The form and accompanying in-

structions describe, pursuant to the authority contained in sections 304(h)(1) and 402 of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816; 33 U.S.C. 1251 (1972)), requirements for the acquisition of information from owners and operators of point sources subject to the National Pollutant Discharge Elimination System.

Copies of the forms are available at State water pollution control agencies having approved programs and at all Environmental Protection Agency Regional Offices.

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

1. Section 124.1 is amended to add new paragraphs (u) and (v) as follows:

§ 124.1 Definitions.

(u) The term "animal confinement facility" means a lot or facility used or capable of being used for the feeding or holding of animals (other than fish or other aquatic animals), but does not include land used for the growing of crops or vegetation for animal feed. Two or more animal confinement facilities under common ownership are deemed to be a single animal confinement facility if they are adjacent to each other or if they utilize a common area or system for the disposal of wastes.

(v) The term "aquatic animal production facility" means a hatchery, fish farm, or other facility which contains, grows or holds

(1) Fish or other aquatic animals in ponds, raceways or other similar structures for purposes of production and from which there is a discharge on any 30 days or more per year, but does not include

(i) Closed ponds which discharge only during periods of excess runoff, or

(ii) Facilities which produce less than 20,000 pounds of aquatic animals per year;

(2) any species of fish or other aquatic animal [other than carp (*Cyprinum carpio*), goldfish (*Carassius auratus*), or brown trout (*Salmo trutta*)] non-native to the United States (non-native fish are as defined in "Special Publication No. 6" of the American Fisheries Society entitled, "A List of Common and Scientific Names of Fishes from the U.S. and Canada") and from which there is a discharge at any time. "Special Publication No. 6" may be ordered through the American Fisheries Society, 1319 18th Street, NW., Washington, D.C. 20036.

2. Subpart B is amended to read as follows:

Subpart B—Prohibition of Discharges Into State Waters

Sec.

124.10 Prohibition of discharges into State waters.

124.11 Exclusions.

AUTHORITY: Sec. 304(h)(1) of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972, (86 Stat. 816; 33 U.S.C.A. 1251 et seq. (1972))

Subpart B—Prohibition of Discharges of Pollutants

§ 124.10 Prohibition of discharges into State waters.

Except as provided in § 124.11, any State or interstate program participating in the NPDES must have a statute or regulation, enforceable in State courts, which prohibits discharges of pollutants by any person except as authorized pursuant to an NPDES permit.

(Comment. It is recognized that some State or interstate programs presently exempt or exclude certain categories, types, or sizes of point sources from the general prohibition of the unauthorized discharge of pollutants or from the requirement of obtaining a permit. Other States have in effect "grandfather" clauses which either exempt discharges already in existence or provide for automatic issuance of a permit to existing discharges. Except as provided in § 124.11, exceptions to the general prohibition cannot be approved. Depending on their scope and nature, any such exceptions will either (1) constitute grounds for withholding approval of the entire submitted program until such time as the State or interstate agency revises or modifies its program to conform to this subpart, or (2) constitute categories, types, or sizes of point sources for which the Administrator will not suspend the issuance of NPDES permits. In the latter case, the Administrator will issue NPDES permits for those point sources not subject to the State or interstate agency's authority.)

§ 124.11 Exclusions.

State and interstate programs may exclude the following from the requirement of obtaining an NPDES permit:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel: *Provided*, That this exclusion shall not be construed to apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to discharges when the vessel is operating in a capacity other than a vessel such as when a vessel is being used as a storage facility or a cannery;

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources;

(c) Approved aquaculture projects;

(d) Dredged or fill material discharged into navigable waters;

(e) Additions of sewage, industrial wastes or other materials into publicly owned treatment works. (This exclusion applies only to the actual addition of materials into the publicly owned treatment works. Plans or agreements to make such additions in the future do not relieve dischargers of the obligation to apply for and receive permits until the discharges of pollutants to navigable waters are actually eliminated. It also

should be noted that in all appropriate cases, pretreatment standards promulgated by the Administrator pursuant to section 307(b) of the Act must be complied with.)

(f) Uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity, unless the particular storm runoff discharge has been identified by the Regional Administrator, the State water pollution control agency or an interstate agency as a significant contributor of pollution. (It is anticipated that significant contributors of pollution will be identified in connection with the development of plans pursuant to section 303(e) of the Act. This exclusion applies only to separate storm sewers. Discharges from combined sewers and bypass sewers are not excluded.)

(g) Any discharge of any pollutant when such discharge conforms with the national contingency plan for removal of oil and hazardous substances, published pursuant to subsection 311(c)(2) of the Act.

(h) Discharges of pollutants from agricultural and silvicultural activities, including irrigation return flow and runoff from orchards, cultivated crops, pastures rangelands, and forest lands, except that this exclusion shall not apply to the following:

(1) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

(i) 1,000 slaughter and feeder cattle;

(ii) 700 mature dairy cattle (whether milkers or dry cows);

(iii) 2,500 swine weighing over 55 pounds

(iv) 10,000 sheep;

(v) 55,000 turkeys;

(vi) If the animal confinement facility has continuous overflow watering, 100,000 laying hens and broilers;

(vii) If the animal confinement facility has liquid manure handling systems; 30,000 laying hens and broilers;

(viii) 5,000 ducks;

(2) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, a combination of animals such that the sum of the following numbers is 1,000 or greater: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1;

(3) Discharges from aquatic animal production facilities;

(4) Discharges of irrigation return flow (such as tailwater, tile drainage, surfaced groundwater flow or bypass water), operated by public or private organizations or individuals, if: (1) There is a point source of discharge (e.g., a pipe, ditch, or other defined or discrete conveyance, whether natural or artificial

and; (ii) the return flow is from land areas of more than 3,000 contiguous acres, or 3,000 non-contiguous acres which use the same drainage system; and

(5) Discharges from any agricultural or silvicultural activity which have been identified by the Regional Administrator or the Director of the State water pollution control agency or interstate agency as a significant contributor of pollution.

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

1. Two new paragraphs, (ii) and (jj), are added to § 125.1 as follows:

§ 125.1 Definitions.

(ii) The term "animal confinement facility" means a lot or facility used or capable of being used for the feeding or holding of animals (other than fish or other aquatic animals), but does not include land used for the growing of crops or vegetation for animal feed. Two or more animal confinement facilities under common ownership are deemed to be a single animal confinement facility if they are adjacent to each other or if they utilize a common area or system for the disposal of wastes.

(jj) The term "aquatic animal production facility" means a hatchery, fish farm, or other facility which contains, grows, or holds:

(1) Fish or other aquatic animals in ponds, raceways or other similar structures for purposes of production and from which there is a discharge on any 30 days or more per year, but does not include:

(i) Closed ponds which discharge only during periods of excess runoff, or

(ii) Facilities which produce less than 20,000 pounds of aquatic animals per year;

(2) Any species of fish or other animal life [other than carp (*Cyprinus carpio*), goldfish (*Carassius auratus*), or brown trout (*Salmo trutta*)] non-native to the United States (non-native fish are as defined in "Special Publication No. 6" of the American Fisheries Society entitled, "A list of Common and Scientific Names of Fishes from the U.S. and Canada"), and from which there is a discharge at any time. "Special Publication No. 6" may be ordered through the American Fisheries Society, 1319 18th Street, NW., Washington, D.C. 20036.

2. A new § 125.4(j) is added as follows:

§ 125.4 Exclusions.

(j) Discharges of pollutants from agricultural and silvicultural activities, including irrigation return flow and runoff from orchards, cultivated crops, pastures, rangelands, and forest lands, except that this exclusion shall not apply to the following:

(1) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

- (i) 1,000 slaughter and feeder cattle;
- (ii) 700 mature dairy cattle (whether milkers or dry cows);
- (iii) 2,500 swine weighing over 55 pounds;
- (iv) 10,000 sheep;
- (v) 55,000 turkeys;
- (vi) If the animal confinement facility has continuous overflow watering, 100,000 laying hens and broilers;
- (vii) If the animal confinement facility has liquid manure handling systems, 30,000 laying hens and broilers;

(viii) 5,000 ducks;

(2) Discharges from animal confinement facilities, if such facility or facilities contain, or at any time during the previous 12 months contained for a total of 30 days or more, a combination of animals such that the sum of the following numbers is 1,000 or greater: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1;

(3) Discharges from aquatic animal production facilities;

(4) Discharges of irrigation return flow (such as tailwater, tile drainage,

surfaced groundwater flow or bypass water), operated by public or private organizations or individuals, if: (1) There is a point source of discharge (e.g., a pipe, ditch, or other defined or discrete conveyance, whether natural or artificial) and; (2) the return flow is from land areas of more than 3,000 contiguous acres, or 3,000 non-contiguous acres which use the same drainage system; and

(5) Discharges from any agricultural or silvicultural activity which have been identified by the Regional Administrator or the Director of the State water pollution control agency or interstate agency as a significant contributor of pollution.

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