

# FACT SHEET FOR 2<sup>nd</sup> DRAFT GENERAL PERMIT NO. ARG590000, CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO) IN THE STATE OF ARKANSAS

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## INTRODUCTION:

UNDER 40 CFR 124.14(c), ONLY THOSE PORTIONS OF THE FIRST DRAFT PERMIT WHICH HAVE BEEN MODIFIED OR WERE COMMENTED UPON IN THE FIRST PUBLIC NOTICE COMMENT PERIOD ARE OPEN FOR COMMENT AT THIS TIME. THIS IS A MODIFIED PERMIT. IN ACCORDANCE WITH 40 CFR 122.62, ONLY THE CONDITIONS WHICH ARE THE SUBJECT OF THE MODIFICATION ARE REOPENED. COMMENTS CONCERNING ANY PORTIONS OF THE PERMIT WHICH HAVE NOT BEEN REOPENED WILL NOT BE CONSIDERED.

In the 2008 Clean Water Act CAFO regulation, the EPA required that Concentrated Animal Feeding Operations (CAFOs) that **discharge** or **propose to discharge** pollutants to the waters of the state obtain a National Pollutant Discharge Elimination System (NPDES) permit. Based on 2008 rule and 40 CFR 122 and 412, the Department released the draft CAFO permit (1<sup>st</sup> draft) for public comment on February 11, 2011. The ADEQ conducted six (6) public meetings and hearings for the proposed CAFO Permit. The public comment period ended March 11, 2011. However, on March 15, 2011, the U.S. Fifth Circuit Court of Appeals has issued an opinion that only CAFOs that have to obtain permits are those that are actually **discharging** pollutants to waters of the state. The Department made a decision to revise the 1<sup>st</sup> draft CAFO permit to remove “or **proposes discharge**”. Therefore, removal of “or proposes discharge” is the only change from the 1<sup>st</sup> permit.

## 1. BACKGROUND

This permit is written to allow Concentrated Animal Feeding Operations (CAFOs) operating in the State of Arkansas a general permit in accordance with the 2008 “CAFO Rule.”

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. **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.

### 2.1. **Notification Requirements**

- 2.1.1. 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:
  - 2.1.1.1. NOI and Nutrient Management Plan;
  - 2.1.1.2. a Disclosure Form as required by Arkansas Pollution Control and Ecology Commission (APCEC) Regulation. 8.204, and;
  - 2.1.1.3. a permit fee of \$200 as allowed by APCEC Regulation 9.
  - 2.1.1.4. ADEQ Form 1, if the facility is proposing construction, such that APCEC Regulation 6.202 may be complied with.

### 2.2. **Individual Permits**

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. However, an individual permit will not be issued for a point source covered by a general permit unless it can be demonstrated that inclusion under a general permit is inappropriate. The Director may consider the issuance of individual permits according to the criteria in 40 CFR 122.28(b)(3). These criteria include:

- 2.2.1. The discharger is not in compliance with the conditions of the general NPDES permit;
  - 2.2.2. A change has occurred in the availability of demonstrated technology or practices for control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
  - 2.2.3. Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;
  - 2.2.4. A Water Quality Management plan containing requirements applicable to such point sources is approved;
  - 2.2.5. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
  - 2.2.6. Standards for sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit; or
  - 2.2.7. The discharge(s) is a significant contributor of pollutants. In making this determination, the Director may consider the following factors:
    - 2.2.7.1. The location of the discharge with respect to Waters of the State;
    - 2.2.7.2. The size of the discharge;
    - 2.2.7.3. The quantity and nature of the pollutants discharged to Waters of the State; and
    - 2.2.7.4. Other relevant factors.
3. **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.

#### 4. **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).

#### 5. **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 APCEC Regulation No. 2.

#### 6. **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 (BOD<sub>5</sub>), 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.

#### 7. **Other Conditions**

##### 7.1. 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.

##### 7.2. 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.

7.3. 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.

7.4. 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 APCEC 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:

7.4.1 Reissuance or replacement of this permit, at which time the operator must comply with the conditions of the new permit to maintain authorization to discharge and, the operator is required to notify the Department of his/her intent to be covered under this permit within 120 days after the effective date of the renewal permit ; or

7.4.2 Submittal of a Notice of Termination; or

7.4.3 Issuance of an individual permit for the facility's discharges; or

7.4.4 A formal permit decision by the ADEQ to not re-issue this general permit, at which time the facility must seek coverage under an individual permit or other alternate permits.

8. **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 (APCEC Regulation Nos. 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 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.

9. **Sources**

- 9.1 Arkansas Water Quality Management Plan (WQMP).
- 9.2 APCEC Regulation No. 2.
- 9.3 APCEC Regulation No. 5.
- 9.4 APCEC Regulation No. 6.

- 9.5 APCEC Regulation No. 8.
- 9.6 APCEC Regulation No. 9.
- 9.7 40 CFR Parts 122, 123, 124, 125 and 412.
- 9.8 NMG010000, New Mexico CAFO General Permit
- 9.9 OKG010000, Oklahoma Draft CAFO General Permit and Fact Sheet
- 9.10 Fifth Circuit Court of Appeals ruling

10. **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.