

Permit No. NE0134775

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. § 1251, et. seq.; the "Act"), authorization is given to:

**Stanek Brothers
Rt. 1, Box 143
Walthill, NE 68067**

Standard Industrial Code (SIC2) = 0211

to discharge from a Concentrated Animal Feeding Operation (CAFO) located at:

NW ¼, Section 36, Township 25N, Range 8E
Thurston County, Nebraska

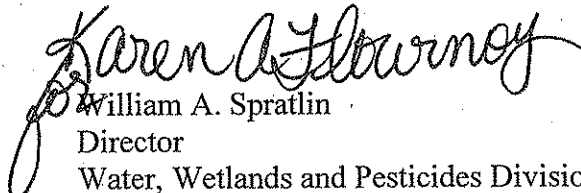
to receiving waters named: Unnamed tributary to South Omaha Creek (segment MT1-12180)

only if the CAFO is operated in accordance with the effluent limitations, best management practices, and other requirements and conditions set forth herein. Compliance with this permit will prevent most discharges from the CAFO production area and the land application areas used by the CAFO. Authorization for discharge is limited to when precipitation causes an overflow from a properly designed, constructed, operated, and maintained runoff control system consistent with the requirements of this permit.

This permit shall become effective on February 1, 2009.

This permit and the authorization to discharge shall expire at midnight, January 31, 2014.

Signed this 18th day of December 2008.


William A. Spratlin
Director
Water, Wetlands and Pesticides Division

PART I. EFFLUENT LIMITATIONS AND STANDARDS

A. Facility Description

Stanek Brothers is a Concentrated Animal Feeding Operation with approximately **24** acres of open lot pens that are used for the feeding of up to **2,000** head of beef cattle and three loafing barns and a milking parlor for up to **450** dairy cows. Runoff from the open lot pens and approximately **17** acres of other contributing drainage area is directed to a runoff holding pond. The runoff holding pond has a capacity of approximately **35.5** Acre ft. Manure scraped from the loafing barns, final flush water from the loafing barns, and waste water from the milking parlor are stored in a manure storage pond that has a capacity of **13.4** Acre ft. Solid manure scraped from the pens, solids removed from the debris basins, the contents of the holding pond, and the contents of the manure storage pond are to be applied to the land application areas in accordance with the CAFO's Nutrient Management Plan ("NMP").

B. Description of Discharge Points

There is to be no discharge of pollutants from the production area, except for the limited exception authorized in Part I. C.1. (Technology-based Effluent Limitations) for an overflow from a holding pond.

After this permit is modified to incorporate the terms of the NMP, land application area operations are to be performed in accordance with a NMP so that the only discharge from the land application areas is agricultural storm water runoff.

C. Effluent Limitations and Standards

1. Technology-based Effluent Limitations and Standards - Production Area

There must be no discharge of manure, litter, or process wastewater pollutants into waters of the United States from the production area except as provided in paragraphs 1(a) (i) and (ii) of this section.

(a) *Overflow Discharge* - Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into waters of the United States provided:

- (i) The production area is properly designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the 25-year, 24-hour rainfall event for the location of the CAFO, and;
- (ii) The production area is operated in accordance with the Additional Measures and Records for Production Area, specified in Part I. C.2., and the Best Management Practices, Livestock Waste Storage and Holding Pond Capacity and Operation, specified in Part II. A.1. and 2. of this permit.

2. Additional Measures and Records for Production Area

In addition to the requirements in Part I. C.1. of this permit, the permittee must implement the following additional measures.

(a) *Visual Inspections* -

- (i) Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to debris basins and holding ponds;
- (ii) Daily inspections of all water lines, including drinking water or cooling water lines; and,
- (iii) Weekly inspections of the holding ponds. Such inspections shall include noting the level as indicated by a depth marker installed in the impoundment. Each depth marker must clearly indicate the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event for the location of the CAFO.

(b) *Corrective Actions* - Any deficiencies that are identified in these daily and weekly inspections must be corrected as soon as possible.

(c) *Mortality Handling* - No disposal of animal mortalities in any liquid manure or process wastewater systems. Handle animal mortalities so as to prevent discharge of pollutants to surface water.

(d) *Record Keeping for Production Area* - The permittee must maintain for a period of five years from the date they are created, complete on-site records of:

- (i) implementation of all required additional measures for the production area included in this section (Part I. C.2.) of this permit;
- (ii) the as built 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; and
- (iii) date, time, and estimated volume of any overflow.

3. Technology-based Effluent Limitations and Standards - Land Application Areas Under the Control of the CAFO Owner/Operator.

- (a) *Nutrient Management Plan* - If the permittee land applies manure, litter, or process wastewater, a nutrient management plan ("NMP") must be developed in accordance with the requirements specified in this Section, Part I.C.3. and Part II. B. (Nutrient Management Plan), and will be implemented in accordance with Part II.E. (Permit to be Reopened and Modified).

- (b) *Manure and Soil Sampling* - Manure and process wastewater must be analyzed at least once annually for nitrogen and phosphorus content, and soil must be analyzed at least once every five years for phosphorus content. The results of these analyses are to be used in determining application rates for manure, litter, and process wastewater.
- (c) *Inspection of Land Application Equipment for Leaks* - The permittee shall periodically inspect equipment used for land application of manure, litter, or process wastewater for leaks.
- (d) *Land Application Setback Requirements* - Application of manure, litter, or process wastewater closer than 100 feet to any down-gradient waters of the United States, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to waters of the United States is prohibited. As a compliance alternative, the permittee may: (i) substitute a 35-foot wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited, for the 100-foot setback; or (ii) demonstrate to EPA Region 7 that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback.
- (e) *Record Keeping Requirements* - The permittee shall maintain for a period of five years complete on-site records, including the site-specific NMP, documenting implementation of all required land application practices, in accordance with the specifications in Part III. B.3(b) of this permit.

PART II. SPECIAL CONDITIONS

A. Best Management Practices

1. Livestock Waste Storage

The permittee shall, at a minimum, provide adequate storage of all manure, litter, and process wastewater, including runoff that has come into contact with animal waste, for a period of no less than the maximum length of time between land applications or offsite transfers of the manure, litter, or process wastewater.

2. Holding Pond Capacity and Operation

(a) The minimum capacity provided for by the "Winter Pump Down" level shall allow for storage of the expected runoff from the 25-year/24-hour storm event, plus the greater of the expected runoff from the month of June average precipitation or the maximum runoff expected between land applications or disposal events. Reference: USDA-NRCS "Agricultural Waste Management Field Handbook."

(b) Dewatering of holding ponds shall begin on the first dewatering day following a precipitation event and continue on all subsequent dewatering days until the "Must Pump" level is reached (see Mark A on Figure 1). The "Must Pump" level indicates the storage volume needed to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event. Capacity of the pumping system shall be adequate to land apply the runoff from the 25-year, 24-hour precipitation event in 14 days or less.

(c) For each day when the water level in the holding pond is above the "Must Pump" level, the permittee shall maintain documentation of (1) land application procedures and information as required in this Permit, Part III.B.3.(b) (*Records of land application procedures*) or (2) the soil and/or weather conditions that made that particular day unsuitable as a dewatering day as required in this Permit, Part III.B.3.(a)(v) (*Records for the production area*).

(d) The holding pond shall be dewatered prior to the winter months to provide capacity indicated by the "Winter Pump Down" level (see Mark B on Figure 1).

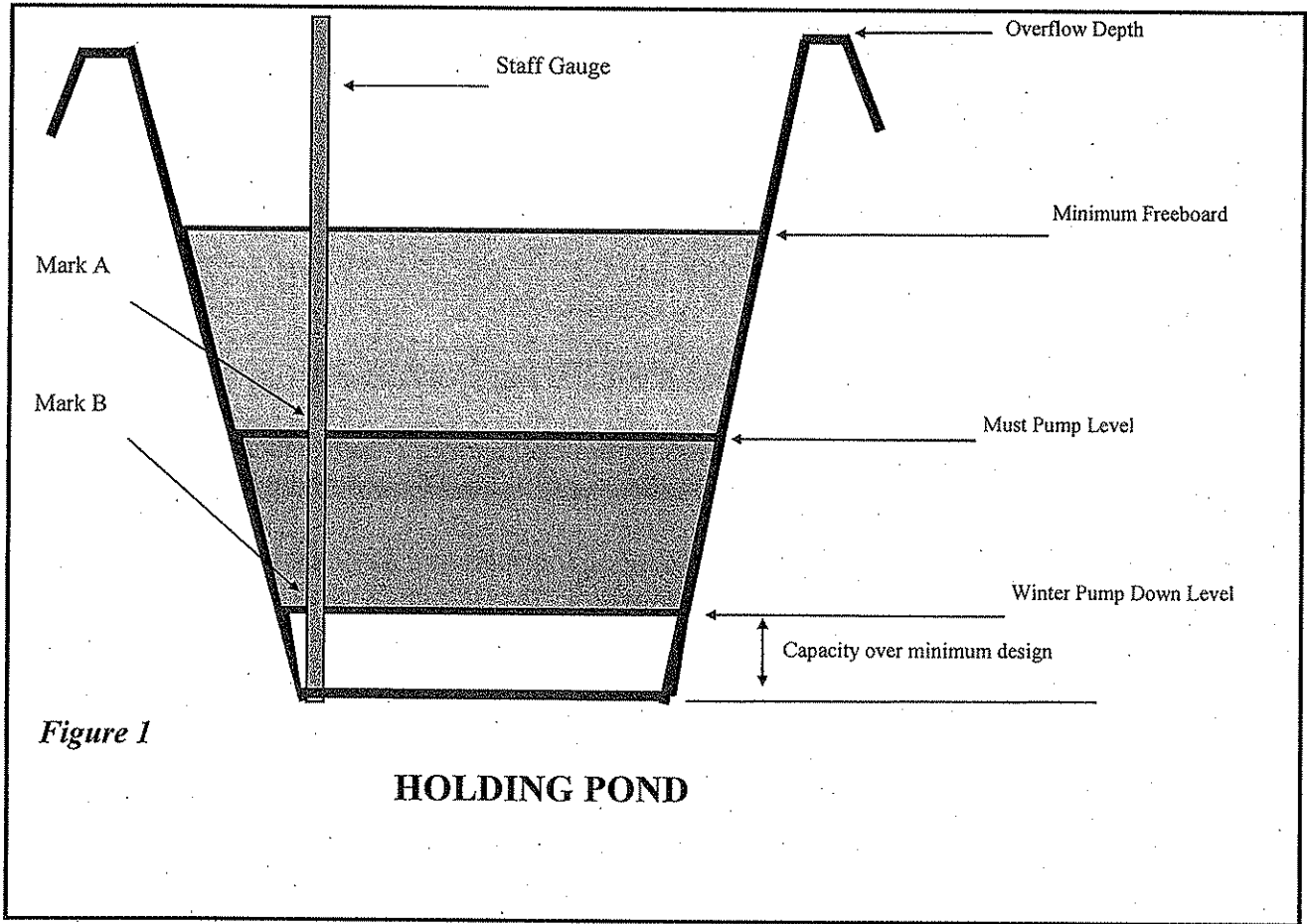


Figure 1

HOLDING POND

B. Nutrient Management Plan

The permittee shall develop a site-specific nutrient management plan ("NMP"). The NMP shall specifically identify and describe best management practices and procedures that are to be implemented to assure compliance with the effluent limitations and standards, and special conditions of this Permit, Part I (Effluent Limitations) and Part II (Special Conditions). The terms of an EPA Region 7 reviewed NMP will be enforceable terms of this Permit in accordance with the Part II. E. (Permit to be Reopened and Modified).

1. The NMP must be developed based on the following three requirements:

- (a) The NMP must incorporate the requirements contained in 40 CFR §412.4, which are specified in this Permit, Part I.C.3 (Technology-based Effluent Limitations);
- (b) The NMP must be in compliance with EPA Region 7's Technical Standards for Nutrient Management; and,
- (c) The NMP must, to the extent applicable, meet the 9 minimum site-specific measures listed this Section, Part II. B.2.

2. The site-specific NMP must:

- (a) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- (b) Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- (c) Ensure that clean water is diverted, as appropriate, from the production area;
- (d) Prevent the direct contact of confined animals with waters of the United States;
- (e) Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals or contaminants;
- (f) Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;
- (g) Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
- (h) 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,
- (i) Identify specific records that will be maintained to document the implementation and management of the minimum practices described in paragraphs (a) through (h) of this Section, Part II.B.2.

3. Signature

The NMP shall be signed by the owner/operator or other signatory authority in accordance with this Permit, Part V.G. (Signatory Requirements).

4. Schedule and Submittal

The permittee shall develop the NMP in accordance with the following schedule:

- (a) The NMP must be developed by February 27, 2009; and,
- (b) The NMP shall be submitted by February 27, 2009, to EPA R7 at:

CAFO Permit Coordinator
Wastewater Infrastructure and Management Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

- (c) The final NMP will become effective and implemented by the permittee after completion of the Permit reopener and modification procedure specified in this Permit, Part II.E (Permit to be Reopened and Modified).

5. Maintain copy on site

A current copy of the NMP shall be kept on site. In addition, a copy of this NPDES permit is to be maintained on site.

6. Agricultural Stormwater

There is to be no discharge of manure, litter, or process wastewater to waters of the United States 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. Where manure, litter, or process wastewater has been applied in accordance with a site-specific NMP, as specified in 40 CFR § 122.42(e)(1), a precipitation related discharge of manure, litter, or process wastewater from land areas under the control of the CAFO is considered to be an agricultural storm water discharge.

C. Facility Closure

The following conditions shall apply to the closure of lagoons and other earthen or synthetic lined basins and other manure, litter, or process wastewater storage and handling structures.

1. Closure of Lagoons and Other Surface Impoundments:

- (a) No lagoon or other earthen or synthetic lined basin shall be abandoned.
- (b) Lagoons and other earthen or synthetic lined basins shall be maintained at all times until closed in compliance with this section.
- (c) All lagoons and other earthen or synthetic lined basins must be properly closed if the permittee ceases operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of twelve consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either: (i) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or (ii) removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. In either case, the permittee shall notify EPA of the action taken, and shall conduct the routine inspections, maintenance, and record keeping required by this permit as though the structure were in use. Prior to restoration of use of the structure, the permittee shall notify EPA and provide the opportunity for inspection.
- (d) All closure of lagoons and other earthen or synthetic lined basins must be consistent with Natural Resource Conservation Service Conservation Practice Standard 360, Closure of Waste Impoundments, see NE-T.G. Notice 502, Section IV, NRCS-October 2001. Consistent with this standard, the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittees NMP, unless otherwise authorized in writing by EPA.
- (e) Unless otherwise authorized in writing by EPA, completion of closure for lagoons and other earthen or synthetic lined basins shall occur as promptly as possible after the permittee ceases to operate or, if the permittee has not ceased operations, 12 months from the date on which the use of the structure ceased, unless the lagoons or basins are being maintained for possible future use in accordance with the requirements herein.

D. Requirements for the Transfer of Manure, Litter, and Process Wastewater To Other Persons

In cases where CAFO-generated manure, litter, or process wastewater is sold or given away the permittee must comply with the following conditions.

1. Records and nutrient content information:

- (a) Maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted operation;
- (b) Record the name and address of the recipient;
- (c) Provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater; and,
- (d) Retain these records on-site for a period of five years and submit these records to EPA upon request.

E. Permit to be Reopened and Modified

1. Inclusion of NMP Terms:

After the Nutrient Management Plan (NMP) has been submitted by the permittee to EPA Region 7 and following EPA's review of the NMP and tentative decision to accept the NMP, the permit will be reopened and modified under the regulations at 40 CFR Section 124 and Section 122.62. If the Regional Administrator tentatively decides to modify the permit to incorporate the terms of an enforceable NMP, he or she will follow the regulations at 40 CFR Section 124.6 to propose changes and provide public notice and comment. This permit condition is in accordance with the decision by the Second Circuit Court of Appeals in Waterkeeper Alliance et al. v. EPA 399 F.3d 486 (2nd Cir. 2005).

2. Waterbody Impairment

If a pollutant that may be discharged by the permittee is the basis for a 303(d) listing for impairment of a receiving waterbody and there is a Total Maximum Daily Load or other pertinent information developed for that pollutant, the permit may be reopened and modified under the regulations at 40 CFR Section 124 and Section 122.62 to propose changes to permit conditions relating to that pollutant and provide public notice and comment.

Part III. INSPECTION, MONITORING AND RECORD KEEPING REQUIREMENTS

A. Notification of Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport, and/or Application

1. Discharge of pollutants

If, for any reason, there is a discharge of pollutants to a water of the United States, the permittee is required to:

- (a) make oral notification within 24 hours to EPA Region 7 by calling the Region 7 Action Line at 1-800-223-0425 and asking for the Chief, Water Enforcement Branch, or if after regular business hours or on a weekend or holiday by calling the EPA Spill Hotline at (913) 281-0991; and,
- (b) notify EPA in writing within five (5) days of the discharge from the facility. In addition, the permittee shall keep a copy of the notification submitted to EPA together with the other records required by this permit. The discharge notification shall include the following information:

- (i) A description of the discharge and its cause, including a description of the flow path to the receiving water body;
- (ii) An estimate of the flow and volume discharged;
- (iii) A description of the impact on the receiving water body;
- (iv) The period of the discharge, including starting dates and times, and if not corrected, the anticipated time it is expected to cease and the steps being taken or to reduce, eliminate, and prevent recurrence of the discharge; and,
- (v) The written discharge notification shall be submitted to the following address:

Indian Country Compliance Coordinator
Water Enforcement Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

B. General Inspection, Monitoring, and Record Keeping Requirements

1. Inspections

The permittee is required to have routine inspections conducted of the production area, irrigation distribution system, and land application areas as follows:

- (a) Daily inspections at the production area of water lines, including drinking water or cooling water lines;
- (b) Weekly inspections at the production area of the manure, litter, and process wastewater impoundments. The inspection record must note the level in liquid impoundments as indicated by the depth marker;
- (c) Weekly inspections at the production area of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the facilities;
- (d) Inspections at least once a year to determine the sludge and sediment accumulation level in liquid impoundments;
- (e) Inspections are required prior to operation of the equipment used to apply manure, litter or process wastewater, including the irrigation distribution system and the water source protection equipment; and,
- (f) The irrigation system and other application equipment must be monitored while in use to insure proper operation.

2. Markers and Measurements

- (a) Daily precipitation shall be recorded from a rain gauge that is kept on site and properly maintained.
- (b) Maintenance of a permanent marker (staff gauge or marking device) is required in each holding pond to measure the liquid depth in increments of one foot or less and to measure accumulations of manure, litter, and process wastewater. Permanent markers must comply with the following:
 - (i) Be made of durable material;
 - (ii) Permanently fixed and referenced to a permanently fixed benchmark or fixed elevation reference point adjacent to, and outside of, the waste containment area;
 - (iii) Located where the depth marks can be easily and safely viewed for facility management and inspections; and,
 - (iv) Be clearly marked with the following levels:
 - Freeboard level (Freeboard is the elevation difference between the designed full depth and the overflow depth.);

- The “Must Pump” level, indicating the volume needed to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event.
- The “Winter Pump Down” level, indicating the volume needed for the minimum design storage capacity, which must be available prior to the start of the storage period. The minimum storage period volume shall not be less than that needed to provide adequate storage through the winter months.

3. Record Keeping

Production area and land application area records must be maintained at the CAFO for a period of five years from the date they are created. Records of the following information are required:

(a) *Records for the production area –*

- (i) A record of inspections as required in this Section, Part III. B. 1 (a) – (d), including dates and results;
- (ii) Any actions taken to correct deficiencies found as a result of required inspections. For any deficiencies not corrected within 30 days, the records must include an explanation of the factors preventing immediate correction;
- (iii) Weekly measurements of the depth of the manure and process wastewater in the holding pond as indicated by the depth marker;
- (iv) Measurements of the liquid levels in the holding pond following:
 - A precipitation event; and,
 - Land application of livestock wastes from the holding pond;
- (v) Soil and weather conditions that demonstrate that a particular day was unsuitable as a dewatering day if the water level in the holding pond was above the “Must Pump” level and the permittee did not perform land application;
- (vi) Documentation of the as built design of any manure or litter storage structures;
- (vii) Total design capacity for liquids and solids;
- (viii) All sampling and test results related to the design and construction of the facility; and,
- (ix) Approximate number of days of storage capacity, demonstrating that the holding pond capacity is adequate to meet the design storage requirements,

(b) *Records of land application procedures and information, including –*

- (i) The nutrient management plan (when completed), including the phosphorus risk assessment for each field and the test methods used to sample and analyze manure, litter, process wastewater, and soil;
- (ii) Expected crop yields for the land application areas;
- (iii) Explanation of the basis for determining manure, litter, and process wastewater application rates;
- (iv) Method(s) used to apply the manure, litter, or process wastewater;

- (v) Date(s) manure, litter, or process wastewater was applied to each field;
- (vi) Weather conditions at the time of application and for 24 hour prior to and following application;
- (vii) If nutrients are applied to frozen, snow covered, or saturated soil, then the permittee shall record the reasons why the risk of runoff did not exist for a specific field. The Region 7 Technical Standards for Nutrient Management require that nutrients shall not be applied to frozen, snow covered, or saturated soil if the potential risk for runoff exists, and in addition prohibit application to a field with a high phosphorus risk assessment rating under those circumstances;
- (viii) Documentation and calculations showing the total nitrogen and phosphorus planned and actually applied to each field;
- (ix) Results from manure, litter, process wastewater, irrigation water, and soil sampling and testing; and,
- (x) Dates of manure application equipment inspection as required in this Section, Part III. B. 1. (e) and (f).

(c) Other Records Required -

- (i) Mortality management, chemical management, and related practices used by the operation;
- (ii) The completed permit application; and,
- (iii) Discharges or overflows, including date, time, and estimated volume.

PART IV. ANNUAL REPORTING REQUIREMENTS

A. Reporting Deadline

The permittee must submit an annual report to EPA by **JANUARY 31ST** of each year. The annual report shall be submitted to EPA R7 at:

Indian Country Compliance Coordinator
Water Enforcement Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

B. Contents of Annual Report

The annual report must include the following information:

1. The maximum number and type of animals confined at any one time during each month of the year, whether in open confinement or housed under roof;
2. Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
3. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);
4. 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;
5. 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; and,
6. A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner.

PART V. STANDARD PERMIT CONDITIONS

A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR Part 122.41, et. seq., this permit incorporates by reference all conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the "Act") as well as all applicable regulations.

2. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation, and reissuance; or for denial of a permit renewal application.

3. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The Permittee shall submit a

new application to the U. S. Environmental Protection Agency, Region 7, at least 180 days before the expiration date of this permit. The application shall be sent to:

CAFO Permit Coordinator
Wastewater Infrastructure and Management Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

The terms and conditions of this permit continue in force under 5 U.S.C. § 558 (c) until the effective date of the new permit (or permit denial) only if the permittee has submitted a timely and complete application under 40 C.F.R. § 122.21 for a renewal permit and the Permitting Authority, through no fault of the permittee, does not issue a new permit (or deny the permit) before the expiration date of this permit. The permit continued under 5 U.S.C. § 558(c) remains fully effective and enforceable, subject to the actions set forth in 40 C.F.R. § 122.6(c).

4. Toxic pollutants

The permittee shall comply with effluent standards and prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request 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. 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/Tribal or local laws or regulations.

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

8. Criminal and Civil Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the Permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

9. State/Tribal 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/Tribal law or regulation under authority preserved by Section 510 of the Act.

10. 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.

B. Proper Operation and Maintenance

1. Need to halt or reduce activity not a defense

It shall not be a defense for a permittee in an enforcement action to plead that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. 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.

3. 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. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

C. Monitoring and Records

1. Inspection and entry

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

- (a) Enter 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;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) Inspect, at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and,
- (d) Sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report, or application. This period may be extended by request of the permitting authority at any time. Data collected on site, data used to prepare annual reports, copies of annual reports, and a copy of this NPDES permit must also be maintained on site.

4. Records content

Records of monitoring information shall include:

- (a) The date, exact place, and time of sampling or measurements;
- (b) The individual(s) who performed the sampling or measurements;
- (c) The date(s) analyses were performed;
- (d) The individual(s) who performed the analyses;
- (e) The analytical techniques or methods used; and,
- (f) The results of such analyses.

D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the EPA, Region 7, as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (a) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 122.29(b); or,
- (b) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification also applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 122.42(a)(1); or,
- (c) The alteration or addition results in a significant change in the permittee's manure use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit. This includes notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to a nutrient management plan.

2. Anticipated Noncompliance

The permittee shall give advance notice to the EPA, Region 7, of any planned physical alterations or additions or changes in activity which may result in noncompliance with requirements in this permit.

3. Transfers

A permit may be automatically transferred to another party if:

- (a) The Permittee notifies the EPA of the proposed transfer at least 30 days in advance of the proposed transfer date;
- (b) The notice includes a written agreement between the existing and new Permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,
- (c) The EPA does not notify the existing Permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part b., above.

4. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

5. Twenty-four hour Reporting

The permittee shall report any noncompliance that may endanger human health or the environment. Any information must be provided orally within 24 hours from the time that the permittee becomes aware of the circumstances to the Chief, Water Enforcement Branch, at

phone number (800) 223-0425. Reports of noncompliance under this paragraph may be made to the EPA Spill Hotline at (913) 281-0991 if such noncompliance is discovered after regular business hours or on a weekend or holiday, or response assistance from EPA is requested.

A written submission shall also be provided to the EPA, Region 7, within five (5) days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

- (a) A description of the noncompliance and its cause;
- (b) 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,
- (c) Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

6. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under above and of this section, at the time that annual reports are submitted. The reports shall contain the information listed in this Section, Part V.D.5.

7. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the EPA Region 7, it shall promptly submit such facts or information.

E. Bypass of Treatment Facilities

1. Definitions:

- (a) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (b) Severe property damage means 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 production.

2. Bypass not exceeding limitations:

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. These bypasses are not subject to the provisions of E.3. and E.4. below.

3. Notice:

- (a) Anticipated bypass. If the permittee knows in advance of the need to bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
- (b) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required by this Section, Part D.6. (24-hour notice).

4. Prohibition of bypass:

- (a) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
 - (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (ii) There are 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 adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,
 - (iii) The permittee submitted notices as required under this Section, E.3.
- (b) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed this Section E.4.(a).

F. Upset

1. Definition:

Upset means 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, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

2. 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 F.3. of this part are met. In any enforcement proceedings the permittee seeking to establish the occurrence of an upset has the burden of proof. No determination made during administrative review of claims that non-compliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., permittee will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for non-compliance with technology-based permit effluent limitations).

3. 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 cause(s) of the upset;
- (b) The permitted facility was at the time being properly operated; and
- (c) The permittee submitted notice of the upset as required in this Section, D.6.b. (24 hour notice).
- (d) The permittee complied with any remedial measures required under this Section, B.2.

G. Signatory requirements

All applications, reports, or information submitted to the EPA Region 7 shall be signed and certified consistent with 40 CFR 122.22:

1. All permit applications shall be signed as follows:

- (a) For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (i) 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
 - (ii) The manager of one or more manufacturing, production, or operating 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; or
- (b) For a partnership or sole proprietorship: By a general partner for a partnership or the proprietor, respectively.

2. All reports shall be signed as follows:

All reports required by the Permit and other information requested by the EPA Region 7 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:

- (a) The authorization is made in writing by a person described above;
- (b) The authorization specifies 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, position of equivalent responsibility, or any individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,
- (c) The written authorization is submitted to the EPA Region 7.

H. 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.

I. Availability of Reports

Any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

J. Penalties for Violations of Permit Conditions

The Act provides that any person who violates Sections 301, 302, 306, 307, 308 or 405 of the Act, or any permit condition or limitation implementing such Sections in a permit issued under Section 402 of the Act, is subject to civil penalties not to exceed \$32,500 per day for each violation under Section 309 of the Act. Any person who willfully or negligently violates Sections 301, 302, 306, 307, or 308 of the Act, or any permit condition or limitation implementing such Sections, may be subject to a fine or imprisonment pursuant to Section 309(c) of the Act. Except as provided in sections II-B-3, Bypass of Treatment Facilities, and II-B-4, Upset, of this permit, nothing in this permit shall be construed to relieve the Permittee of civil or criminal liability for noncompliance.

PART VI. DEFINITIONS

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) 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 (ii) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Application means the EPA standard national forms for seeking coverage under an NPDES permit, including any additions, revisions or modifications to the forms; e.g. for NPDES individual permits, Form 1 and 2B pursuant to 40 CFR 122.1(d).

Concentrated animal feeding operation (CAFO) means an "animal feeding operation" which meets the criteria in 40 CFR Part 122.23, or which the Director designates as a significant contributor of pollution pursuant to 40 CFR 122.23.

Dewatering Days shall mean those days which have suitable weather and soil conditions for land application of accumulated livestock wastes.

Suitable soil conditions do not exist if:

- (a) the minimum amount to be applied through the irrigation system exceeds the capacity of the soil to store the moisture; or
- (b) the application rate exceeds the rate of water movement into the soil (soil infiltration rate). High soil moisture or frozen soils will reduce soil infiltration rates.

Suitable weather conditions do not exist if:

- (a) the air temperature is freezing; or
- (b) a precipitation event is occurring or, a precipitation event, capable of producing runoff and erosion, is forecast within 24 hours of the time of planned application.

Holding Pond means an impoundment made by constructing an excavated pit, dam, embankment or combination of these, for temporary storage of liquid livestock wastes, generally receiving runoff from open lots and contributing drainage area.

Land application means the application of manure and/or wastewater onto or incorporation into the soil.

Land application area means land under the control of a CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied. The act of application by the CAFO operator constitutes control, and would fall within the bounds of "under the control", independent of any specific agreements.

Liquid manure handling system means a system that collects and transports or moves waste material with the use of water, such as in washing of pens and flushing of confinement facilities. This would include the use of water impoundments for manure and/or wastewater treatment.

Manure is defined to include manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

Minimum Design Storage Capacity shall mean the capacity required to contain all manure, litter, and process wastewater (process wastewater includes runoff which has come into contact with animal waste) generated during the storage period; the runoff from a 25-year, 24-hour rainfall event; any net positive amount from normal precipitation less evaporation during the storage period; and any additional storage needed to meet management goals or other regulatory requirements. The storage period must be no less than the maximum length of time between each planned land application or disposal events.

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.

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 storm water can be contained by the structure.

Process wastewater means water directly or indirectly used in the operation of the CAFO 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 CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with or is a constituent of raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

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 containment 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 storm water. 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.

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.

The Act means Federal Water Pollution Control Act as amended, also known as the Clean Water Act as amended, found at 33 USC 1251 et seq.

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.

Waters of the United States means: (1) all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (2) all interstate waters, including interstate wetlands; (3) all other waters such as intrastate lakes, rivers, and streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (a) which are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or, which are or could be used for industrial purposes by industries in interstate commerce; (4) all impoundments of waters otherwise defined as waters of the U.S.; (5) tributaries of waters identified in (1) through (4) of this definition; (6) the territorial sea; and (7) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in items (1) through (6) of this definition.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101**

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. § 1251, et. seq.; the "Act"), authorization is given to:

**Sebade Feedyard
Rt 1, Box 189
Emerson, NE 68733**

Standard Industrial Code (SIC2) = 0211

to discharge from a Concentrated Animal Feeding Operation (CAFO) located at:

NE ¼, Section 3, Township 26N, Range 6E
Thurston, County, Nebraska

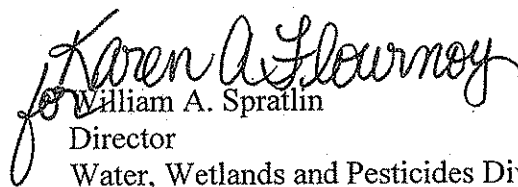
to receiving waters named: Unnamed tributary to Middle Creek (segment EL2-20300)

only if the CAFO is operated in accordance with the effluent limitations, best management practices, and other requirements and conditions set forth herein. Compliance with this permit will prevent most discharges from the CAFO production area and the land application areas used by the CAFO. Authorization for discharge is limited to when precipitation causes an overflow from a properly designed, constructed, operated, and maintained runoff control system consistent with the requirements of this permit.

This permit shall become effective on February 1, 2009.

This permit and the authorization to discharge shall expire at midnight, January 31, 2014.

Signed this 18th day of December, 2008


for William A. Spratlin
Director
Water, Wetlands and Pesticides Division

PART I. EFFLUENT LIMITATIONS AND STANDARDS

A. Facility Description

Sebade Feedyard is a Concentrated Animal Feeding Operation with approximately 34 acres of open lot pens that are used for the feeding of up to 6,500 head of beef cattle. Runoff from the open lot pens and approximately 26 acres of other contributing drainage area is directed to runoff holding pond(s). The runoff holding pond(s) have a capacity of approximately 46.6 Acre ft. Solid manure scrapped from the pens, solids removed from the debris basins, and the contents of the holding pond(s) are to be applied to the land application areas in accordance with the CAFO's Nutrient Management Plan ("NMP").

B. Description of Discharge Points

There is to be no discharge of pollutants from the production area, except for the limited exception authorized in Part I. C.1. (Technology-based Effluent Limitations) for an overflow from a holding pond.

After this permit is modified to incorporate the terms of the NMP, land application area operations are to be performed in accordance with a NMP so that the only discharge from the land application areas is agricultural storm water runoff.

C. Effluent Limitations and Standards

1. Technology-based Effluent Limitations and Standards - Production Area

There must be no discharge of manure, litter, or process wastewater pollutants into waters of the United States from the production area except as provided in paragraphs 1(a) (i) and (ii) of this section.

(a) *Overflow Discharge* - Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into waters of the United States provided:

- (i) The production area is properly designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the 25-year, 24-hour rainfall event for the location of the CAFO, and;
- (ii) The production area is operated in accordance with the Additional Measures and Records for Production Area, specified in Part I. C.2., and the Best Management Practices, Livestock Waste Storage and Holding Pond Capacity and Operation, specified in Part II. A.1. and 2. of this permit.

2. Additional Measures and Records for Production Area

In addition to the requirements in Part I. C.1. of this permit, the permittee must implement the following additional measures.

(a) *Visual Inspections* -

- (i) Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to debris basins and holding ponds;
- (ii) Daily inspections of all water lines, including drinking water or cooling water lines; and,
- (iii) Weekly inspections of the holding ponds. Such inspections shall include noting the level as indicated by a depth marker installed in the impoundment. Each depth marker must clearly indicate the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event for the location of the CAFO.

(b) *Corrective Actions* - Any deficiencies that are identified in these daily and weekly inspections must be corrected as soon as possible.

(c) *Mortality Handling* - No disposal of animal mortalities in any liquid manure or process wastewater systems. Handle animal mortalities so as to prevent discharge of pollutants to surface water.

(d) *Record Keeping for Production Area* - The permittee must maintain for a period of five years from the date they are created, complete on-site records of:

- (i) implementation of all required additional measures for the production area included in this section (Part I. C.2.) of this permit;
- (ii) the as built 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; and
- (iii) date, time, and estimated volume of any overflow.

3. Technology-based Effluent Limitations and Standards - Land Application Areas Under the Control of the CAFO Owner/Operator.

- (a) *Nutrient Management Plan* - If the permittee land applies manure, litter, or process wastewater, a nutrient management plan ("NMP") must be developed in accordance with the requirements specified in this Section, Part I.C.3. and Part II. B. (Nutrient Management Plan), and will be implemented in accordance with Part II.E. (Permit to be Reopened and Modified).

- (b) *Manure and Soil Sampling* - Manure and process wastewater must be analyzed at least once annually for nitrogen and phosphorus content, and soil must be analyzed at least once every five years for phosphorus content. The results of these analyses are to be used in determining application rates for manure, litter, and process wastewater.
- (c) *Inspection of Land Application Equipment for Leaks* - The permittee shall periodically inspect equipment used for land application of manure, litter, or process wastewater for leaks.
- (d) *Land Application Setback Requirements* - Application of manure, litter, or process wastewater closer than 100 feet to any down-gradient waters of the United States, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to waters of the United States is prohibited. As a compliance alternative, the permittee may: (i) substitute a 35-foot wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited, for the 100-foot setback; or (ii) demonstrate to EPA Region 7 that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback.
- (e) *Record Keeping Requirements* - The permittee shall maintain for a period of five years complete on-site records, including the site-specific NMP, documenting implementation of all required land application practices, in accordance with the specifications in Part III. B.3.(b) of this permit.

PART II. SPECIAL CONDITIONS

A. Best Management Practices

1. Livestock Waste Storage

The permittee shall, at a minimum, provide adequate storage of all manure, litter, and process wastewater, including runoff that has come into contact with animal waste, for a period of no less than the maximum length of time between land applications or offsite transfers of the manure, litter, or process wastewater.

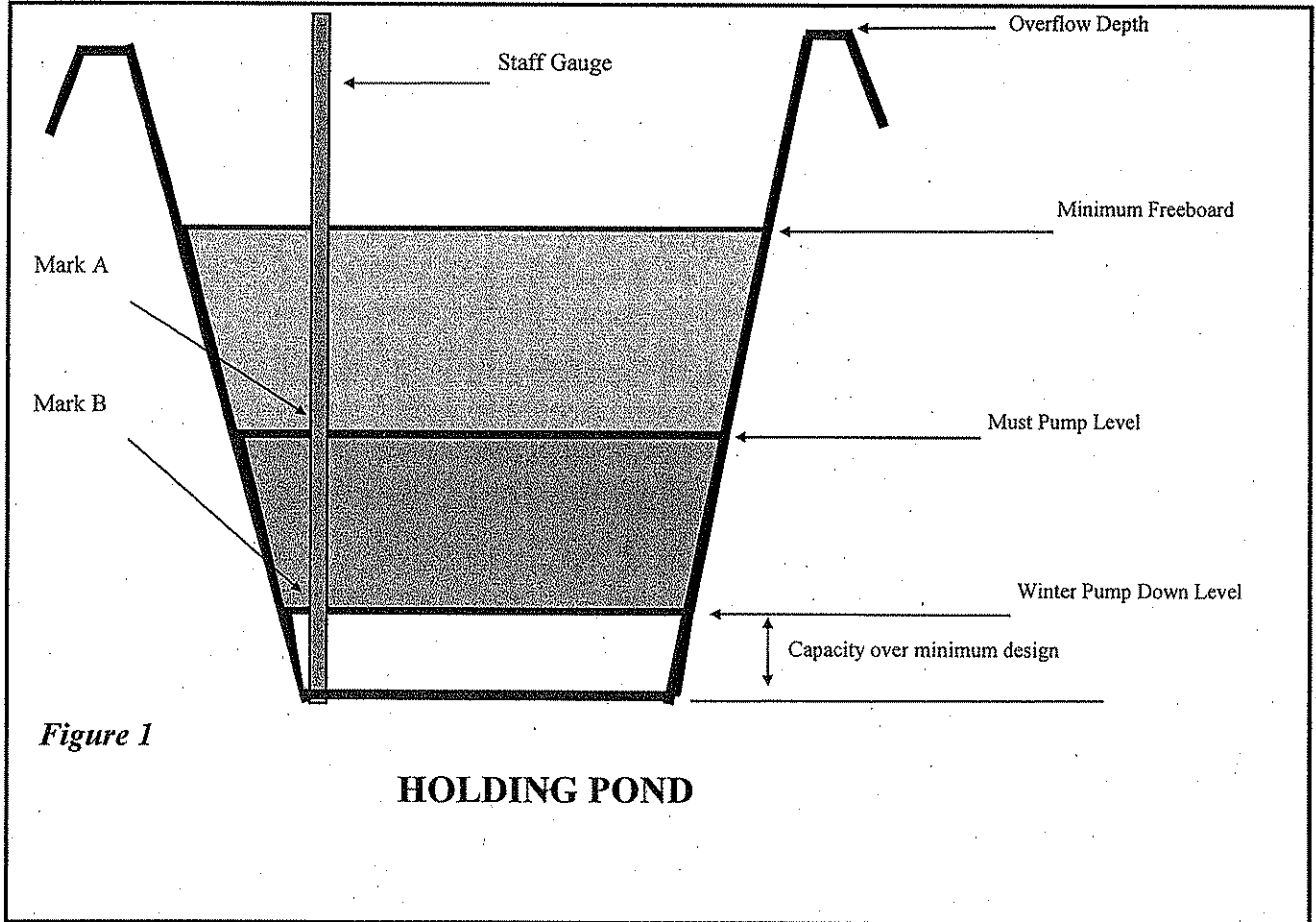
2. Holding Pond Capacity and Operation

(a) The minimum capacity provided for by the "Winter Pump Down" level shall allow for storage of the expected runoff from the 25-year/24-hour storm event, plus the greater of the expected runoff from the month of June average precipitation or the maximum runoff expected between land applications or disposal events. Reference: USDA-NRCS "Agricultural Waste Management Field Handbook."

(b) Dewatering of holding ponds shall begin on the first dewatering day following a precipitation event and continue on all subsequent dewatering days until the "Must Pump" level is reached (see Mark A on Figure 1). The "Must Pump" level indicates the storage volume needed to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event. Capacity of the pumping system shall be adequate to land apply the runoff from the 25-year, 24-hour precipitation event in 14 days or less.

(c) For each day when the water level in the holding pond is above the "Must Pump" level, the permittee shall maintain documentation of (1) land application procedures and information as required in this Permit, Part III.B.3.(b) (Records of *land application procedures*) or (2) the soil and/or weather conditions that made that particular day unsuitable as a dewatering day as required in this Permit, Part III.B.3.(a)(v) (Records *for the production area*).

(d) The holding pond shall be dewatered prior to the winter months to provide capacity indicated by the "Winter Pump Down" level (see Mark B on Figure 1).



B. Nutrient Management Plan

The permittee shall develop a site-specific nutrient management plan ("NMP"). The NMP shall specifically identify and describe best management practices and procedures that are to be implemented to assure compliance with the effluent limitations and standards, and special conditions of this Permit, Part I (Effluent Limitations) and Part II (Special Conditions). The terms of an EPA Region 7 reviewed NMP will be enforceable terms of this Permit in accordance with the Part II. E. (Permit to be Reopened and Modified).

1. The NMP must be developed based on the following three requirements:

- (a) The NMP must incorporate the requirements contained in 40 CFR §412.4, which are specified in this Permit, Part I.C.3 (Technology-based Effluent Limitations);
- (b) The NMP must be in compliance with EPA Region 7's Technical Standards for Nutrient Management; and,
- (c) The NMP must, to the extent applicable, meet the 9 minimum site-specific measures listed this Section, Part II. B.2.

2. The site-specific NMP must:

- (a) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- (b) Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- (c) Ensure that clean water is diverted, as appropriate, from the production area;
- (d) Prevent the direct contact of confined animals with waters of the United States;
- (e) Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals or contaminants;
- (f) Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;
- (g) Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
- (h) 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,
- (i) Identify specific records that will be maintained to document the implementation and management of the minimum practices described in paragraphs (a) through (h) of this Section, Part II.B.2.

3. Signature

The NMP shall be signed by the owner/operator or other signatory authority in accordance with this Permit, Part V.G. (Signatory Requirements).

4. Schedule and Submittal

The permittee shall develop the NMP in accordance with the following schedule:

- (a) The NMP must be developed by February 27, 2009; and,
- (b) The NMP shall be submitted by February 27, 2009, to EPA R7 at:

CAFO Permit Coordinator
Wastewater Infrastructure and Management Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

- (c) The final NMP will become effective and implemented by the permittee after completion of the Permit reopener and modification procedure specified in this Permit, Part II.E (Permit to be Reopened and Modified).

5. Maintain copy on site

A current copy of the NMP shall be kept on site. In addition, a copy of this NPDES permit is to be maintained on site.

6. Agricultural Stormwater

There is to be no discharge of manure, litter, or process wastewater to waters of the United States 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. Where manure, litter, or process wastewater has been applied in accordance with a site-specific NMP, as specified in 40 CFR § 122.42(e)(1), a precipitation related discharge of manure, litter, or process wastewater from land areas under the control of the CAFO is considered to be an agricultural storm water discharge.

C. Facility Closure

The following conditions shall apply to the closure of lagoons and other earthen or synthetic lined basins and other manure, litter, or process wastewater storage and handling structures.

1. Closure of Lagoons and Other Surface Impoundments:

- (a) No lagoon or other earthen or synthetic lined basin shall be abandoned.
- (b) Lagoons and other earthen or synthetic lined basins shall be maintained at all times until closed in compliance with this section.
- (c) All lagoons and other earthen or synthetic lined basins must be properly closed if the permittee ceases operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of twelve consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either: (i) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or (ii) removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. In either case, the permittee shall notify EPA of the action taken, and shall conduct the routine inspections, maintenance, and record keeping required by this permit as though the structure were in use. Prior to restoration of use of the structure, the permittee shall notify EPA and provide the opportunity for inspection.
- (d) All closure of lagoons and other earthen or synthetic lined basins must be consistent with Natural Resource Conservation Service Conservation Practice Standard 360, Closure of Waste Impoundments, see NE-T.G. Notice 502, Section IV, NRCS-October 2001. Consistent with this standard, the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittees NMP, unless otherwise authorized in writing by EPA.
- (e) Unless otherwise authorized in writing by EPA, completion of closure for lagoons and other earthen or synthetic lined basins shall occur as promptly as possible after the permittee ceases to operate or, if the permittee has not ceased operations, 12 months from the date on which the use of the structure ceased, unless the lagoons or basins are being maintained for possible future use in accordance with the requirements herein.

D. Requirements for the Transfer of Manure, Litter, and Process Wastewater To Other Persons

In cases where CAFO-generated manure, litter, or process wastewater is sold or given away the permittee must comply with the following conditions.

1. Records and nutrient content information:

- (a) Maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted operation;
- (b) Record the name and address of the recipient;
- (c) Provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater; and,
- (d) Retain these records on-site for a period of five years and submit these records to EPA upon request.

E. Permit to be Reopened and Modified

1. Inclusion of NMP Terms:

After the Nutrient Management Plan (NMP) has been submitted by the permittee to EPA Region 7 and following EPA's review of the NMP and tentative decision to accept the NMP, the permit will be reopened and modified under the regulations at 40 CFR Section 124 and Section 122.62. If the Regional Administrator tentatively decides to modify the permit to incorporate the terms of an enforceable NMP, he or she will follow the regulations at 40 CFR Section 124.6 to propose changes and provide public notice and comment. This permit condition is in accordance with the decision by the Second Circuit Court of Appeals in Waterkeeper Alliance et al. v. EPA 399 F.3d 486 (2nd Cir. 2005).

2. Waterbody Impairment

If a pollutant that may be discharged by the permittee is the basis for a 303(d) listing for impairment of a receiving waterbody and there is a Total Maximum Daily Load or other pertinent information developed for that pollutant, the permit may be reopened and modified under the regulations at 40 CFR Section 124 and Section 122.62 to propose changes to permit conditions relating to that pollutant and provide public notice and comment.

Part III. INSPECTION, MONITORING AND RECORD KEEPING REQUIREMENTS

A. Notification of Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport, and/or Application

1. Discharge of pollutants

If, for any reason, there is a discharge of pollutants to a water of the United States, the permittee is required to:

(a) make oral notification within 24 hours to EPA Region 7 by calling the Region 7 Action Line at 1-800-223-0425 and asking for the Chief, Water Enforcement Branch, or if after regular business hours or on a weekend or holiday by calling the EPA Spill Hotline at (913) 281-0991; and,

(b) notify EPA in writing within five (5) days of the discharge from the facility. In addition, the permittee shall keep a copy of the notification submitted to EPA together with the other records required by this permit. The discharge notification shall include the following information:

- (i) A description of the discharge and its cause, including a description of the flow path to the receiving water body;
- (ii) An estimate of the flow and volume discharged;
- (iii) A description of the impact on the receiving water body;
- (iv) The period of the discharge, including starting dates and times, and if not corrected, the anticipated time it is expected to cease and the steps being taken or to reduce, eliminate, and prevent recurrence of the discharge; and,
- (v) The written discharge notification shall be submitted to the following address:

Indian Country Compliance Coordinator
Water Enforcement Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

B. General Inspection, Monitoring, and Record Keeping Requirements

1. Inspections

The permittee is required to have routine inspections conducted of the production area, irrigation distribution system, and land application areas as follows:

- (a) Daily inspections at the production area of water lines, including drinking water or cooling water lines;
- (b) Weekly inspections at the production area of the manure, litter, and process wastewater impoundments. The inspection record must note the level in liquid impoundments as indicated by the depth marker;
- (c) Weekly inspections at the production area of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the facilities;
- (d) Inspections at least once a year to determine the sludge and sediment accumulation level in liquid impoundments;
- (e) Inspections are required prior to operation of the equipment used to apply manure, litter or process wastewater, including the irrigation distribution system and the water source protection equipment; and,
- (f) The irrigation system and other application equipment must be monitored while in use to insure proper operation.

2. Markers and Measurements

- (a) Daily precipitation shall be recorded from a rain gauge that is kept on site and properly maintained.
- (b) Maintenance of a permanent marker (staff gauge or marking device) is required in each holding pond to measure the liquid depth in increments of one foot or less and to measure accumulations of manure, litter, and process wastewater. Permanent markers must comply with the following:
 - (i) Be made of durable material;
 - (ii) Permanently fixed and referenced to a permanently fixed benchmark or fixed elevation reference point adjacent to, and outside of, the waste containment area;
 - (iii) Located where the depth marks can be easily and safely viewed for facility management and inspections; and,
 - (iv) Be clearly marked with the following levels:
 - Freeboard level (Freeboard is the elevation difference between the designed full depth and the overflow depth.);
 - The "Must Pump" level, indicating the volume needed to contain the runoff

and direct precipitation of the 25-year, 24-hour rainfall event.

- The “Winter Pump Down” level, indicating the volume needed for the minimum design storage capacity, which must be available prior to the start of the storage period. The minimum storage period volume shall not be less than that needed to provide adequate storage through the winter months.

3. Record Keeping

Production area and land application area records must be maintained at the CAFO for a period of five years from the date they are created. Records of the following information are required:

(a) Records for the production area –

- (i) A record of inspections as required in this Section, Part III. B. 1 (a) – (d), including dates and results;
- (ii) Any actions taken to correct deficiencies found as a result of required inspections. For any deficiencies not corrected within 30 days, the records must include an explanation of the factors preventing immediate correction;
- (iii) Weekly measurements of the depth of the manure and process wastewater in the holding pond as indicated by the depth marker;
- (iv) Measurements of the liquid levels in the holding pond following:
 - A precipitation event; and,
 - Land application of livestock wastes from the holding pond;
- (v) Soil and weather conditions that demonstrate that a particular day was unsuitable as a dewatering day if the water level in the holding pond was above the “Must Pump” level and the permittee did not perform land application;
- (vi) Documentation of the as built design of any manure or litter storage structures;
- (vii) Total design capacity for liquids and solids;
- (viii) All sampling and test results related to the design and construction of the facility; and,
- (ix) Approximate number of days of storage capacity, demonstrating that the holding pond capacity is adequate to meet the design storage requirements,

(b) Records of land application procedures and information, including –

- (i) The nutrient management plan (when completed), including the phosphorus risk assessment for each field and the test methods used to sample and analyze manure, litter, process wastewater, and soil;
- (ii) Expected crop yields for the land application areas;
- (iii) Explanation of the basis for determining manure, litter, and process wastewater application rates;
- (iv) Method(s) used to apply the manure, litter, or process wastewater;
- (v) Date(s) manure, litter, or process wastewater was applied to each field;
- (vi) Weather conditions at the time of application and for 24 hour prior to and

- following application;
- (vii) If nutrients are applied to frozen, snow covered, or saturated soil, then the permittee shall record the reasons why the risk of runoff did not exist for a specific field. The Region 7 Technical Standards for Nutrient Management require that nutrients shall not be applied to frozen, snow covered, or saturated soil if the potential risk for runoff exists, and in addition prohibit application to a field with a high phosphorus risk assessment rating under those circumstances;
 - (viii) Documentation and calculations showing the total nitrogen and phosphorus planned and actually applied to each field;
 - (ix) Results from manure, litter, process wastewater, irrigation water, and soil sampling and testing; and,
 - (x) Dates of manure application equipment inspection as required in this Section, Part III. B. 1. (e) and (f).

(c) Other Records Required -

- (i) Mortality management, chemical management, and related practices used by the operation;
- (ii) The completed permit application; and,
- (iii) Discharges or overflows, including date, time, and estimated volume.

PART IV. ANNUAL REPORTING REQUIREMENTS

A. Reporting Deadline

The permittee must submit an annual report to EPA by **JANUARY 31ST** of each year. The annual report shall be submitted to EPA R7 at:

Indian Country Compliance Coordinator
Water Enforcement Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

B. Contents of Annual Report

The annual report must include the following information:

1. The maximum number and type of animals confined at any one time during each month of the year, whether in open confinement or housed under roof;
2. Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
3. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);
4. 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;
5. 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; and,
6. A statement indicating whether the current version of the CAFOs NMP was developed or approved by a certified nutrient management planner.

PART V. STANDARD PERMIT CONDITIONS

A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR Part 122.41, et. seq., this permit incorporates by reference all conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the "Act") as well as all applicable regulations.

2. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation, and reissuance; or for denial of a permit renewal application.

3. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The Permittee shall submit a

new application to the U. S. Environmental Protection Agency, Region 7, at least 180 days before the expiration date of this permit. The application shall be sent to:

CAFO Permit Coordinator
Wastewater Infrastructure and Management Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

The terms and conditions of this permit continue in force under 5 U.S.C. § 558 (c) until the effective date of the new permit (or permit denial) only if the permittee has submitted a timely and complete application under 40 C.F.R. § 122.21 for a renewal permit and the Permitting Authority, through no fault of the permittee, does not issue a new permit (or deny the permit) before the expiration date of this permit. The permit continued under 5 U.S.C. § 558(c) remains fully effective and enforceable, subject to the actions set forth in 40 C.F.R. § 122.6(c).

4. Toxic pollutants

The permittee shall comply with effluent standards and prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request 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. 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/Tribal or local laws or regulations.

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

8. Criminal and Civil Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the Permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

9. State/Tribal 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/Tribal law or regulation under authority preserved by Section 510 of the Act.

10. 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.

B. Proper Operation and Maintenance

1. Need to halt or reduce activity not a defense

It shall not be a defense for a permittee in an enforcement action to plead that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. 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.

3. 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. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

C. Monitoring and Records

1. Inspection and entry

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

- (a) Enter 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;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) Inspect, at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and,
- (d) Sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report, or application. This period may be extended by request of the permitting authority at any time. Data collected on site, data used to prepare annual reports, copies of annual reports, and a copy of this NPDES permit must also be maintained on site.

4. Records content

Records of monitoring information shall include:

- (a) The date, exact place, and time of sampling or measurements;
- (b) The individual(s) who performed the sampling or measurements;
- (c) The date(s) analyses were performed;
- (d) The individual(s) who performed the analyses;
- (e) The analytical techniques or methods used; and,
- (f) The results of such analyses.

D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the EPA, Region 7, as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (a) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 122.29(b); or,
- (b) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification also applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 122.42(a)(1); or,
- (c) The alteration or addition results in a significant change in the permittees manure use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit. This includes notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to a nutrient management plan.

2. Anticipated Noncompliance

The permittee shall give advance notice to the EPA, Region 7, of any planned physical alterations or additions or changes in activity which may result in noncompliance with requirements in this permit.

3. Transfers

A permit may be automatically transferred to another party if:

- (a) The Permittee notifies the EPA of the proposed transfer at least 30 days in advance of the proposed transfer date;
- (b) The notice includes a written agreement between the existing and new Permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,
- (c) The EPA does not notify the existing Permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part b., above.

4. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

5. Twenty-four hour Reporting

The permittee shall report any noncompliance that may endanger human health or the environment. Any information must be provided orally within 24 hours from the time that the permittee becomes aware of the circumstances to the Chief, Water Enforcement Branch, at

phone number (800) 223-0425. Reports of noncompliance under this paragraph may be made to the EPA Spill Hotline at (913) 281-0991 if such noncompliance is discovered after regular business hours or on a weekend or holiday, or response assistance from EPA is requested.

A written submission shall also be provided to the EPA, Region 7, within five (5) days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

- (a) A description of the noncompliance and its cause;
- (b) 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,
- (c) Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

6. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under above and of this section, at the time that annual reports are submitted. The reports shall contain the information listed in this Section, Part V.D.5.

7. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the EPA Region 7, it shall promptly submit such facts or information.

E. Bypass of Treatment Facilities

1. Definitions:

- (a) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (b) Severe property damage means 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 production.

2. Bypass not exceeding limitations:

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. These bypasses are not subject to the provisions of E.3. and E.4. below.

3. Notice:

- (a) Anticipated bypass. If the permittee knows in advance of the need to bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
- (b) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required by this Section, Part D.6. (24-hour notice).

4. Prohibition of bypass:

- (a) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
 - (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (ii) There are 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 adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,
 - (iii) The permittee submitted notices as required under this Section, E.3.
- (b) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed this Section E.4.(a).

F. Upset

1. Definition:

Upset means 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, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

2. 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 F.3. of this part are met. In any enforcement proceedings the permittee seeking to establish the occurrence of an upset has the burden of proof. No determination made during administrative review of claims that non-compliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., permittee will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for non-compliance with technology-based permit effluent limitations).

3. 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 cause(s) of the upset;
- (b) The permitted facility was at the time being properly operated; and
- (c) The permittee submitted notice of the upset as required in this Section, D.6.b. (24 hour notice).
- (d) The permittee complied with any remedial measures required under this Section, B.2.

G. Signatory requirements

All applications, reports, or information submitted to the EPA Region 7 shall be signed and certified consistent with 40 CFR §122.22:

1. All permit applications shall be signed as follows:

- (a) For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (i) 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
 - (ii) The manager of one or more manufacturing, production, or operating 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; or
- (b) For a partnership or sole proprietorship: By a general partner for a partnership or the proprietor, respectively.

2. All reports shall be signed as follows:

All reports required by the Permit and other information requested by the EPA Region 7 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:

- (a) The authorization is made in writing by a person described above;
- (b) The authorization specifies 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, position of equivalent responsibility, or any individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,
- (c) The written authorization is submitted to the EPA Region 7.

H. 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.

I. Availability of Reports

Any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

J. Penalties for Violations of Permit Conditions

The Act provides that any person who violates Sections 301, 302, 306, 307, 308 or 405 of the Act, or any permit condition or limitation implementing such Sections in a permit issued under Section 402 of the Act, is subject to civil penalties not to exceed \$32,500 per day for each violation under Section 309 of the Act. Any person who willfully or negligently violates Sections 301, 302, 306, 307, or 308 of the Act, or any permit condition or limitation implementing such Sections, may be subject to a fine or imprisonment pursuant to Section 309(c) of the Act. Except as provided in sections II-B-3, Bypass of Treatment Facilities, and II-B-4, Upset, of this permit, nothing in this permit shall be construed to relieve the Permittee of civil or criminal liability for noncompliance.

PART VI. DEFINITIONS

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) 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 (ii) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Application means the EPA standard national forms for seeking coverage under an NPDES permit, including any additions, revisions or modifications to the forms; e.g. for NPDES individual permits, Form 1 and 2B pursuant to 40 CFR 122.1(d).

Concentrated animal feeding operation (CAFO) means an "animal feeding operation" which meets the criteria in 40 CFR Part 122.23, or which the Director designates as a significant contributor of pollution pursuant to 40 CFR 122.23.

Dewatering Days shall mean those days which have suitable weather and soil conditions for land application of accumulated livestock wastes.

Suitable soil conditions do not exist if:

- (a) the minimum amount to be applied through the irrigation system exceeds the capacity of the soil to store the moisture; or
- (b) the application rate exceeds the rate of water movement into the soil (soil infiltration rate). High soil moisture or frozen soils will reduce soil infiltration rates.

Suitable weather conditions do not exist if:

- (a) the air temperature is freezing; or
- (b) a precipitation event is occurring or, a precipitation event, capable of producing runoff and erosion, is forecast within 24 hours of the time of planned application.

Holding Pond means an impoundment made by constructing an excavated pit, dam, embankment or combination of these, for temporary storage of liquid livestock wastes, generally receiving runoff from open lots and contributing drainage area.

Land application means the application of manure and/or wastewater onto or incorporation into the soil.

Land application area means land under the control of a CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied. The act of application by the CAFO operator constitutes control, and would fall within the bounds of "under the control", independent of any specific agreements.

Liquid manure handling system means a system that collects and transports or moves waste material with the use of water, such as in washing of pens and flushing of confinement facilities. This would include the use of water impoundments for manure and/or wastewater treatment.

Manure is defined to include manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

Minimum Design Storage Capacity shall mean the capacity required to contain all manure, litter, and process wastewater (process wastewater includes runoff which has come into contact with animal waste) generated during the storage period; the runoff from a 25-year, 24-hour rainfall event; any net positive amount from normal precipitation less evaporation during the storage period; and any additional storage needed to meet management goals or other regulatory requirements. The storage period must be no less than the maximum length of time between each planned land application or disposal events.

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.

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 storm water can be contained by the structure.

Process wastewater means water directly or indirectly used in the operation of the CAFO 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 CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with or is a constituent of raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

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 containment 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 storm water. 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.

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.

The Act means Federal Water Pollution Control Act as amended, also known as the Clean Water Act as amended, found at 33 USC 1251 et seq.

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.

Waters of the United States means: (1) all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (2) all interstate waters, including interstate wetlands; (3) all other waters such as intrastate lakes, rivers, and streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (a) which are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or, which are or could be used for industrial purposes by industries in interstate commerce; (4) all impoundments of waters otherwise defined as waters of the U.S.; (5) tributaries of waters identified in (1) through (4) of this definition; (6) the territorial sea; and (7) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in items (1) through (6) of this definition

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101**

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. § 1251, et. seq.; the "Act"), authorization is given to:

**Circle T Feedlot, Inc.
RR1, Box 49A
Walthill, NE 68067**

Standard Industrial Code (SIC2) = 0211

to discharge from a Concentrated Animal Feeding Operation (CAFO) located at:

S ½, Section 12, Township 25N, Range 8E
Thurston County, Nebraska

to receiving waters named: Unnamed tributary to South Omaha Creek (segment MT1-12170)

only if the CAFO is operated in accordance with the effluent limitations, best management practices, and other requirements and conditions set forth herein. Compliance with this permit will prevent most discharges from the CAFO production area and the land application areas used by the CAFO. Authorization for discharge is limited to when precipitation causes an overflow from a properly designed, constructed, operated, and maintained runoff control system consistent with the requirements of this permit.

This permit shall become effective on February 1, 2009.

This permit and the authorization to discharge shall expire at midnight, January 31, 2014.

Signed this 18th day of December, 2008.


for William A. Spratlin
Director
Water, Wetlands and Pesticides Division

PART I. EFFLUENT LIMITATIONS AND STANDARDS

A. Facility Description

Circle T Feedlot, Inc. is a Concentrated Animal Feeding Operation with approximately 100 acres of open lot pens that are used for the feeding of up to 11,000 head of beef cattle. Runoff from the open lot pens and approximately 16.8 acres of other contributing drainage area is directed to runoff holding pond(s). The runoff holding pond(s) have a capacity of approximately 57.5 Acre ft. Solid manure scrapped from the pens, solids removed from the debris basins, and the contents of the holding pond(s) are to be applied to the land application areas in accordance with the CAFO's Nutrient Management Plan ("NMP").

B. Description of Discharge Points

There is to be no discharge of pollutants from the production area, except for the limited exception authorized in Part I. C.1. (Technology-based Effluent Limitations) for an overflow from a holding pond.

After this permit is modified to incorporate the terms of the NMP, land application area operations are to be performed in accordance with a NMP so that the only discharge from the land application areas is agricultural storm water runoff.

C. Effluent Limitations and Standards

1. Technology-based Effluent Limitations and Standards - Production Area

There must be no discharge of manure, litter, or process wastewater pollutants into waters of the United States from the production area except as provided in paragraphs 1(a) (i) and (ii) of this section.

(a) *Overflow Discharge* - Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into waters of the United States provided:

- (i) The production area is properly designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the 25-year, 24-hour rainfall event for the location of the CAFO, and;
- (ii) The production area is operated in accordance with the Additional Measures and Records for Production Area, specified in Part I. C.2., and the Best Management Practices, Livestock Waste Storage and Holding Pond Capacity and Operation, specified in Part II. A.1. and 2. of this permit.

2. Additional Measures and Records for Production Area

In addition to the requirements in Part I. C.1. of this permit, the permittee must implement the following additional measures.

(a) *Visual Inspections* -

- (i) Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to debris basins and holding ponds;
- (ii) Daily inspections of all water lines, including drinking water or cooling water lines; and,
- (iii) Weekly inspections of the holding ponds. Such inspections shall include noting the level as indicated by a depth marker installed in the impoundment. Each depth marker must clearly indicate the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event for the location of the CAFO.

(b) *Corrective Actions* - Any deficiencies that are identified in these daily and weekly inspections must be corrected as soon as possible.

(c) *Mortality Handling* - No disposal of animal mortalities in any liquid manure or process wastewater systems. Handle animal mortalities so as to prevent discharge of pollutants to surface water.

(d) *Record Keeping for Production Area* - The permittee must maintain for a period of five years from the date they are created, complete on-site records of:

- (i) implementation of all required additional measures for the production area included in this section (Part I. C.2.) of this permit;
- (ii) the as built 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; and
- (iii) date, time, and estimated volume of any overflow.

3. Technology-based Effluent Limitations and Standards - Land Application Areas Under the Control of the CAFO Owner/Operator.

- (a) *Nutrient Management Plan* - If the permittee land applies manure, litter, or process wastewater, a nutrient management plan ("NMP") must be developed in accordance with the requirements specified in this Section, Part I.C.3. and Part II. B. (Nutrient Management Plan), and will be implemented in accordance with Part II.E. (Permit to be Reopened and Modified).

- (b) *Manure and Soil Sampling* - Manure and process wastewater must be analyzed at least once annually for nitrogen and phosphorus content, and soil must be analyzed at least once every five years for phosphorus content. The results of these analyses are to be used in determining application rates for manure, litter, and process wastewater.
- (c) *Inspection of Land Application Equipment for Leaks* - The permittee shall periodically inspect equipment used for land application of manure, litter, or process wastewater for leaks.
- (d) *Land Application Setback Requirements* - Application of manure, litter, or process wastewater closer than 100 feet to any down-gradient waters of the United States, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to waters of the United States is prohibited. As a compliance alternative, the permittee may: (i) substitute a 35-foot wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited, for the 100-foot setback; or (ii) demonstrate to EPA Region 7 that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback.
- (e) *Record Keeping Requirements* - The permittee shall maintain for a period of five years complete on-site records, including the site-specific NMP, documenting implementation of all required land application practices, in accordance with the specifications in Part III. B.3.(b) of this permit.

PART II. SPECIAL CONDITIONS

A. Best Management Practices

1. Livestock Waste Storage

The permittee shall, at a minimum, provide adequate storage of all manure, litter, and process wastewater, including runoff that has come into contact with animal waste, for a period of no less than the maximum length of time between land applications or offsite transfers of the manure, litter, or process wastewater.

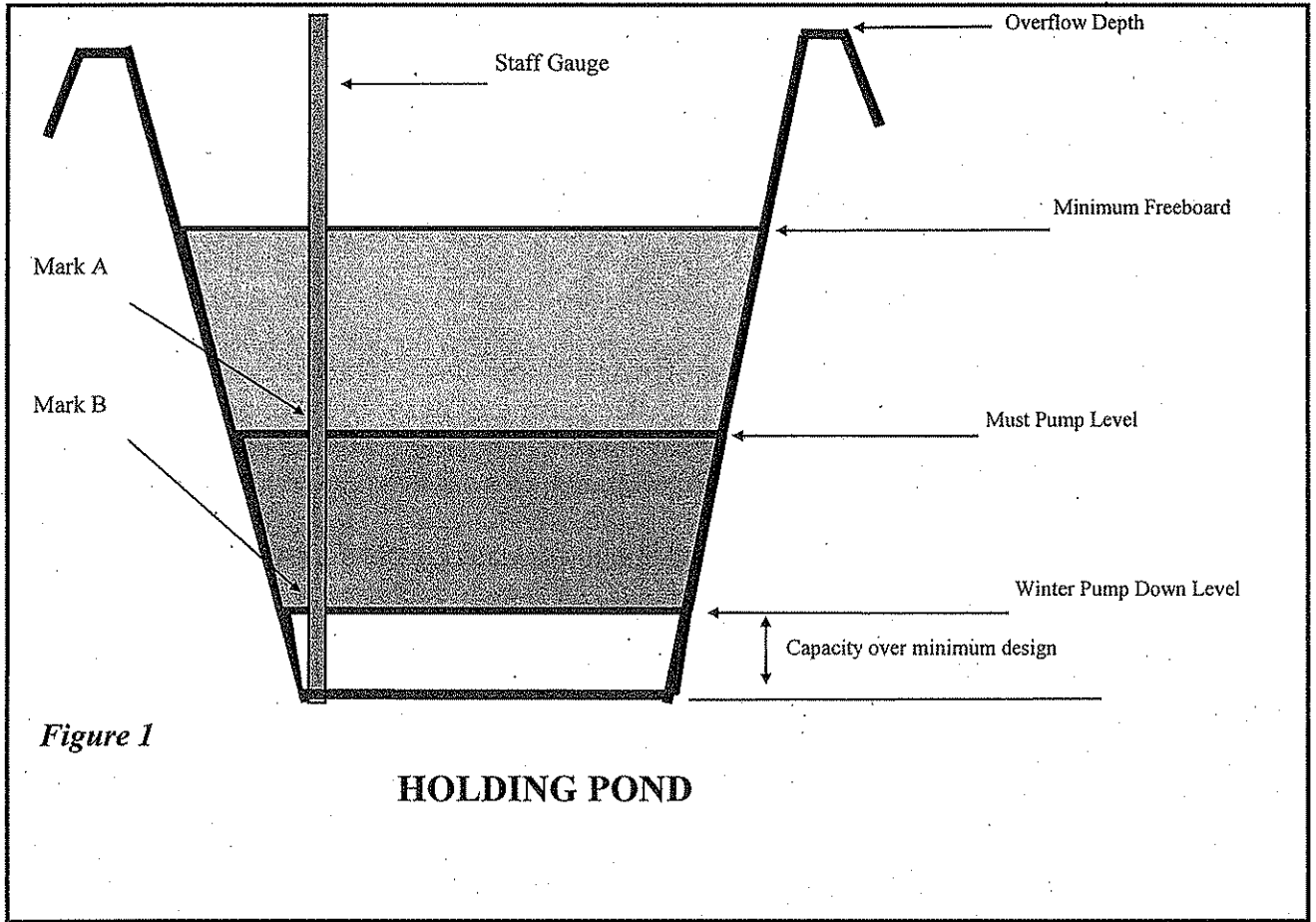
2. Holding Pond Capacity and Operation

(a) The minimum capacity provided for by the "Winter Pump Down" level shall allow for storage of the expected runoff from the 25-year/24-hour storm event, plus the greater of the expected runoff from the month of June average precipitation or the maximum runoff expected between land applications or disposal events. Reference: USDA-NRCS "Agricultural Waste Management Field Handbook."

(b) Dewatering of holding ponds shall begin on the first dewatering day following a precipitation event and continue on all subsequent dewatering days until the "Must Pump" level is reached (see Mark A on Figure 1). The "Must Pump" level indicates the storage volume needed to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event. Capacity of the pumping system shall be adequate to land apply the runoff from the 25-year, 24-hour precipitation event in 14 days or less.

(c) For each day when the water level in the holding pond is above the "Must Pump" level, the permittee shall maintain documentation of (1) land application procedures and information as required in this Permit, Part III.B.3.(b) (Records of *land application procedures*) or (2) the soil and/or weather conditions that made that particular day unsuitable as a dewatering day as required in this Permit, Part III.B.3.(a)(v) (Records *for the production area*).

(d) The holding pond shall be dewatered prior to the winter months to provide capacity indicated by the "Winter Pump Down" level (see Mark B on Figure 1).



B. Nutrient Management Plan

The permittee shall develop a site-specific nutrient management plan ("NMP"). The NMP shall specifically identify and describe best management practices and procedures that are to be implemented to assure compliance with the effluent limitations and standards, and special conditions of this Permit, Part I (Effluent Limitations) and Part II (Special Conditions). The terms of an EPA Region 7 reviewed NMP will be enforceable terms of this Permit in accordance with the Part II. E. (Permit to be Reopened and Modified).

1. The NMP must be developed based on the following three requirements:

- (a) The NMP must incorporate the requirements contained in 40 CFR §412.4, which are specified in this Permit, Part I.C.3 (Technology-based Effluent Limitations);
- (b) The NMP must be in compliance with EPA Region 7's Technical Standards for Nutrient Management; and,
- (c) The NMP must, to the extent applicable, meet the 9 minimum site-specific measures listed this Section, Part II. B.2.

2. The site-specific NMP must:

- (a) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- (b) Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- (c) Ensure that clean water is diverted, as appropriate, from the production area;
- (d) Prevent the direct contact of confined animals with waters of the United States;
- (e) Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals or contaminants;
- (f) Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;
- (g) Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
- (h) 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,
- (i) Identify specific records that will be maintained to document the implementation and management of the minimum practices described in paragraphs (a) through (h) of this Section, Part II.B.2.

3. Signature

The NMP shall be signed by the owner/operator or other signatory authority in accordance with this Permit, Part V.G. (Signatory Requirements).

4. Schedule and Submittal

The permittee shall develop the NMP in accordance with the following schedule:

- (a) The NMP must be developed by February 27, 2009; and,
- (b) The NMP shall be submitted by February 27, 2009, to EPA R7 at:

CAFO Permit Coordinator
Wastewater Infrastructure and Management Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

- (c) The final NMP will become effective and implemented by the permittee after completion of the Permit reopener and modification procedure specified in this Permit, Part II.E (Permit to be Reopened and Modified).

5. Maintain copy on site

A current copy of the NMP shall be kept on site. In addition, a copy of this NPDES permit is to be maintained on site.

6. Agricultural Stormwater

There is to be no discharge of manure, litter, or process wastewater to waters of the United States 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. Where manure, litter, or process wastewater has been applied in accordance with a site-specific NMP, as specified in 40 CFR § 122.42(e)(1), a precipitation related discharge of manure, litter, or process wastewater from land areas under the control of the CAFO is considered to be an agricultural storm water discharge.

C. Facility Closure

The following conditions shall apply to the closure of lagoons and other earthen or synthetic lined basins and other manure, litter, or process wastewater storage and handling structures.

1. Closure of Lagoons and Other Surface Impoundments:

- (a) No lagoon or other earthen or synthetic lined basin shall be abandoned.
- (b) Lagoons and other earthen or synthetic lined basins shall be maintained at all times until closed in compliance with this section.
- (c) All lagoons and other earthen or synthetic lined basins must be properly closed if the permittee ceases operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of twelve consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either: (i) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or (ii) removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. In either case, the permittee shall notify EPA of the action taken, and shall conduct the routine inspections, maintenance, and record keeping required by this permit as though the structure were in use. Prior to restoration of use of the structure, the permittee shall notify EPA and provide the opportunity for inspection.
- (d) All closure of lagoons and other earthen or synthetic lined basins must be consistent with Natural Resource Conservation Service Conservation Practice Standard 360, Closure of Waste Impoundments, see NE-T.G. Notice 502, Section IV, NRCS-October 2001. Consistent with this standard, the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittee's NMP, unless otherwise authorized in writing by EPA.
- (e) Unless otherwise authorized in writing by EPA, completion of closure for lagoons and other earthen or synthetic lined basins shall occur as promptly as possible after the permittee ceases to operate or, if the permittee has not ceased operations, 12 months from the date on which the use of the structure ceased, unless the lagoons or basins are being maintained for possible future use in accordance with the requirements herein.

D. Requirements for the Transfer of Manure, Litter, and Process Wastewater To Other Persons

In cases where CAFO-generated manure, litter, or process wastewater is sold or given away the permittee must comply with the following conditions.

1. Records and nutrient content information:

- (a) Maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted operation;
- (b) Record the name and address of the recipient;
- (c) Provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater; and,
- (d) Retain these records on-site for a period of five years and submit these records to EPA upon request.

E. Permit to be Reopened and Modified

1. Inclusion of NMP Terms:

After the Nutrient Management Plan (NMP) has been submitted by the permittee to EPA Region 7 and following EPA's review of the NMP and tentative decision to accept the NMP, the permit will be reopened and modified under the regulations at 40 CFR Section 124 and Section 122.62. If the Regional Administrator tentatively decides to modify the permit to incorporate the terms of an enforceable NMP, he or she will follow the regulations at 40 CFR Section 124.6 to propose changes and provide public notice and comment. This permit condition is in accordance with the decision by the Second Circuit Court of Appeals in Waterkeeper Alliance et al. v. EPA 399 F.3d 486 (2nd Cir. 2005).

2. Waterbody Impairment

If a pollutant that may be discharged by the permittee is the basis for a 303(d) listing for impairment of a receiving waterbody and there is a Total Maximum Daily Load or other pertinent information developed for that pollutant, the permit may be reopened and modified under the regulations at 40 CFR Section 124 and Section 122.62 to propose changes to permit conditions relating to that pollutant and provide public notice and comment.

Part III. INSPECTION, MONITORING AND RECORD KEEPING REQUIREMENTS

A. Notification of Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport, and/or Application

1. Discharge of pollutants

If, for any reason, there is a discharge of pollutants to a water of the United States, the permittee is required to:

(a) make oral notification within 24 hours to EPA Region 7 by calling the Region 7 Action Line at 1-800-223-0425 and asking for the Chief, Water Enforcement Branch, or if after regular business hours or on a weekend or holiday by calling the EPA Spill Hotline at (913) 281-0991; and,

(b) notify EPA in writing within five (5) days of the discharge from the facility. In addition, the permittee shall keep a copy of the notification submitted to EPA together with the other records required by this permit. The discharge notification shall include the following information:

- (i) A description of the discharge and its cause, including a description of the flow path to the receiving water body;
- (ii) An estimate of the flow and volume discharged;
- (iii) A description of the impact on the receiving water body;
- (iv) The period of the discharge, including starting dates and times, and if not corrected, the anticipated time it is expected to cease and the steps being taken or to reduce, eliminate, and prevent recurrence of the discharge; and,
- (v) The written discharge notification shall be submitted to the following address:

Indian Country Compliance Coordinator
Water Enforcement Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

B. General Inspection, Monitoring, and Record Keeping Requirements

1. Inspections

The permittee is required to have routine inspections conducted of the production area, irrigation distribution system, and land application areas as follows:

- (a) Daily inspections at the production area of water lines, including drinking water or cooling water lines;
- (b) Weekly inspections at the production area of the manure, litter, and process wastewater impoundments. The inspection record must note the level in liquid impoundments as indicated by the depth marker;
- (c) Weekly inspections at the production area of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the facilities;
- (d) Inspections at least once a year to determine the sludge and sediment accumulation level in liquid impoundments;
- (e) Inspections are required prior to operation of the equipment used to apply manure, litter or process wastewater, including the irrigation distribution system and the water source protection equipment; and,
- (f) The irrigation system and other application equipment must be monitored while in use to insure proper operation.

2. Markers and Measurements

- (a) Daily precipitation shall be recorded from a rain gauge that is kept on site and properly maintained.
- (b) Maintenance of a permanent marker (staff gauge or marking device) is required in each holding pond to measure the liquid depth in increments of one foot or less and to measure accumulations of manure, litter, and process wastewater. Permanent markers must comply with the following:
 - (i) Be made of durable material;
 - (ii) Permanently fixed and referenced to a permanently fixed benchmark or fixed elevation reference point adjacent to, and outside of, the waste containment area;
 - (iii) Located where the depth marks can be easily and safely viewed for facility management and inspections; and,
 - (iv) Be clearly marked with the following levels:
 - Freeboard level (Freeboard is the elevation difference between the designed full depth and the overflow depth.);

- The “Must Pump” level, indicating the volume needed to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event.
- The “Winter Pump Down” level, indicating the volume needed for the minimum design storage capacity, which must be available prior to the start of the storage period. The minimum storage period volume shall not be less than that needed to provide adequate storage through the winter months.

3. Record Keeping

Production area and land application area records must be maintained at the CAFO for a period of five years from the date they are created. Records of the following information are required:

(a) Records *for the production area* –

- (i) A record of inspections as required in this Section, Part III. B. 1 (a) – (d), including dates and results;
- (ii) Any actions taken to correct deficiencies found as a result of required inspections. For any deficiencies not corrected within 30 days, the records must include an explanation of the factors preventing immediate correction;
- (iii) Weekly measurements of the depth of the manure and process wastewater in the holding pond as indicated by the depth marker;
- (iv) Measurements of the liquid levels in the holding pond following:
 - A precipitation event; and,
 - Land application of livestock wastes from the holding pond;
- (v) Soil and weather conditions that demonstrate that a particular day was unsuitable as a dewatering day if the water level in the holding pond was above the “Must Pump” level and the permittee did not perform land application;
- (vi) Documentation of the as built design of any manure or litter storage structures;
- (vii) Total design capacity for liquids and solids;
- (viii) All sampling and test results related to the design and construction of the facility; and,
- (ix) Approximate number of days of storage capacity, demonstrating that the holding pond capacity is adequate to meet the design storage requirements,

(b) Records of *land application procedures and information, including* –

- (i) The nutrient management plan (when completed), including the phosphorus risk assessment for each field and the test methods used to sample and analyze manure, litter, process wastewater, and soil;
- (ii) Expected crop yields for the land application areas;
- (iii) Explanation of the basis for determining manure, litter, and process wastewater application rates;

- (iv) Method(s) used to apply the manure, litter, or process wastewater;
- (v) Date(s) manure, litter, or process wastewater was applied to each field;
- (vi) Weather conditions at the time of application and for 24 hour prior to and following application;
- (vii) If nutrients are applied to frozen, snow covered, or saturated soil, then the permittee shall record the reasons why the risk of runoff did not exist for a specific field. The Region 7 Technical Standards for Nutrient Management require that nutrients shall not be applied to frozen, snow covered, or saturated soil if the potential risk for runoff exists, and in addition prohibit application to a field with a high phosphorus risk assessment rating under those circumstances;
- (viii) Documentation and calculations showing the total nitrogen and phosphorus planned and actually applied to each field;
- (ix) Results from manure, litter, process wastewater, irrigation water, and soil sampling and testing; and,
- (x) Dates of manure application equipment inspection as required in this Section, Part III. B. 1. (e) and (f).

(c) Other Records Required -

- (i) Mortality management, chemical management, and related practices used by the operation;
- (ii) The completed permit application; and,
- (iii) Discharges or overflows, including date, time, and estimated volume.

PART IV. ANNUAL REPORTING REQUIREMENTS

A. Reporting Deadline

The permittee must submit an annual report to EPA by **JANUARY 31ST** of each year. The annual report shall be submitted to EPA R7 at:

Indian Country Compliance Coordinator
Water Enforcement Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

B. Contents of Annual Report

The annual report must include the following information:

1. The maximum number and type of animals confined at any one time during each month of the year, whether in open confinement or housed under roof;
2. Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
3. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);
4. 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;
5. 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; and,
6. A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner.

PART V. STANDARD PERMIT CONDITIONS

A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR Part 122.41, et. seq., this permit incorporates by reference all conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the "Act") as well as all applicable regulations.

2. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation, and reissuance; or for denial of a permit renewal application.

3. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The Permittee shall submit a

new application to the U. S. Environmental Protection Agency, Region 7, at least 180 days before the expiration date of this permit. The application shall be sent to:

CAFO Permit Coordinator
Wastewater Infrastructure and Management Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

The terms and conditions of this permit continue in force under 5 U.S.C. § 558 (c) until the effective date of the new permit (or permit denial) only if the permittee has submitted a timely and complete application under 40 C.F.R. § 122.21 for a renewal permit and the Permitting Authority, through no fault of the permittee, does not issue a new permit (or deny the permit) before the expiration date of this permit. The permit continued under 5 U.S.C. § 558(c) remains fully effective and enforceable, subject to the actions set forth in 40 C.F.R. § 122.6(c).

4. Toxic pollutants

The permittee shall comply with effluent standards and prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request 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. 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/Tribal or local laws or regulations.

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

8. Criminal and Civil Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the Permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

9. State/Tribal 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/Tribal law or regulation under authority preserved by Section 510 of the Act.

10. 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.

B. Proper Operation and Maintenance

1. Need to halt or reduce activity not a defense

It shall not be a defense for a permittee in an enforcement action to plead that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. 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.

3. 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. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

C. Monitoring and Records

1. Inspection and entry

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

- (a) Enter 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;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) Inspect, at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and,
- (d) Sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report, or application. This period may be extended by request of the permitting authority at any time. Data collected on site, data used to prepare annual reports, copies of annual reports, and a copy of this NPDES permit must also be maintained on site.

4. Records content

Records of monitoring information shall include:

- (a) The date, exact place, and time of sampling or measurements;
- (b) The individual(s) who performed the sampling or measurements;
- (c) The date(s) analyses were performed;
- (d) The individual(s) who performed the analyses;
- (e) The analytical techniques or methods used; and,
- (f) The results of such analyses.

D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the EPA, Region 7, as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (a) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 122.29(b); or,
- (b) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification also applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 122.42(a)(1); or,
- (c) The alteration or addition results in a significant change in the permittee's manure use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit. This includes notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to a nutrient management plan.

2. Anticipated Noncompliance

The permittee shall give advance notice to the EPA, Region 7, of any planned physical alterations or additions or changes in activity which may result in noncompliance with requirements in this permit.

3. Transfers

A permit may be automatically transferred to another party if:

- (a) The Permittee notifies the EPA of the proposed transfer at least 30 days in advance of the proposed transfer date;
- (b) The notice includes a written agreement between the existing and new Permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,
- (c) The EPA does not notify the existing Permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part b., above.

4. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

5. Twenty-four hour Reporting

The permittee shall report any noncompliance that may endanger human health or the environment. Any information must be provided orally within 24 hours from the time that the permittee becomes aware of the circumstances to the Chief, Water Enforcement Branch, at (800) 223-0425. Reports of noncompliance under this paragraph may be made to the EPA Spill Hotline at (913) 281-0991 if such noncompliance is discovered after regular

business hours or on a weekend or holiday, or response assistance from EPA is requested.

A written submission shall also be provided to the EPA, Region 7, within five (5) days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

- (a) A description of the noncompliance and its cause;
- (b) 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,
- (c) Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

6. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under above and of this section, at the time that annual reports are submitted. The reports shall contain the information listed in this Section, Part V.D.5.

7. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the EPA Region 7, it shall promptly submit such facts or information.

E. Bypass of Treatment Facilities

1. Definitions:

- (a) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (b) Severe property damage means 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 production.

2. Bypass not exceeding limitations:

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. These bypasses are not subject to the provisions of E.3. and E.4. below.

3. Notice:

- (a) Anticipated bypass. If the permittee knows in advance of the need to bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
- (b) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required by this Section, Part D.6. (24-hour notice).

4. Prohibition of bypass:

- (a) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
 - (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (ii) There was 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 adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,
 - (iii) The permittee submitted notices as required under this Section, E.3.
- (b) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed this Section E.4.(a).

F. Upset

1. Definition:

Upset means 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, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

2. 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 F.3. of this part are met. In any enforcement proceedings the permittee seeking to establish the occurrence of an upset has the burden of proof. No determination made during administrative review of claims that non-compliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., permittee will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for non-compliance with technology-based permit effluent limitations).

3. 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 cause(s) of the upset;
- (b) The permitted facility was at the time being properly operated; and
- (c) The permittee submitted notice of the upset as required in this Section D.6.b. (24 hour notice).
- (d) The permittee complied with any remedial measures required under this Section, B.2.

G. Signatory requirements All applications, reports, or information submitted to the EPA Region 7 shall be signed and certified consistent with 40 CFR 122.22:

1. All permit applications shall be signed as follows:

- (a) For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (i) 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
 - (ii) The manager of one or more manufacturing, production, or operating 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; or
- (b) For a partnership or sole proprietorship: By a general partner for a partnership or the proprietor, respectively.

2. **All reports shall be signed as follows:**

All reports required by the Permit and other information requested by the EPA Region 7 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:

- (a) The authorization is made in writing by a person described above;
- (b) The authorization specifies 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, position of equivalent responsibility, or any individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,
- (c) The written authorization is submitted to the EPA Region 7.

H. 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.

I. Availability of Reports

Any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

J. Penalties for Violations of Permit Conditions

The Act provides that any person who violates Sections 301, 302, 306, 307, 308 or 405 of the Act, or any permit condition or limitation implementing such Sections in a permit issued under Section 402 of the Act, is subject to civil penalties not to exceed \$32,500 per day for each violation under Section 309 of the Act. Any person who willfully or negligently violates Sections 301, 302, 306, 307, or 308 of the Act, or any permit condition or limitation implementing such Sections, may be subject to a fine or imprisonment pursuant to Section 309(c) of the Act. Except as provided in sections II-B-3, Bypass of Treatment Facilities, and II-B-4, Upset, of this permit, nothing in this permit shall be construed to relieve the Permittee of civil or criminal liability for noncompliance.

PART VI. DEFINITIONS

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) 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 (ii) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Application means the EPA standard national forms for seeking coverage under an NPDES permit, including any additions, revisions or modifications to the forms; e.g. for NPDES individual permits, Form 1 and 2B pursuant to 40 CFR 122.1(d).

Concentrated animal feeding operation (CAFO) means an "animal feeding operation" which meets the criteria in 40 CFR Part 122.23, or which the Director designates as a significant contributor of pollution pursuant to 40 CFR 122.23.

Dewatering Days shall mean those days which have suitable weather and soil conditions for land application of accumulated livestock wastes.

Suitable soil conditions do not exist if:

- (a) the minimum amount to be applied through the irrigation system exceeds the capacity of the soil to store the moisture; or
- (b) the application rate exceeds the rate of water movement into the soil (soil infiltration rate). High soil moisture or frozen soils will reduce soil infiltration rates.

Suitable weather conditions do not exist if:

- (a) the air temperature is freezing; or
- (b) a precipitation event is occurring or, a precipitation event, capable of producing runoff and erosion, is forecast within 24 hours of the time of planned application.

Holding Pond means an impoundment made by constructing an excavated pit, dam, embankment or combination of these, for temporary storage of liquid livestock wastes, generally receiving runoff from open lots and contributing drainage area.

Land application means the application of manure and/or wastewater onto or incorporation into the soil.

Land application area means land under the control of a CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied. The act of application by the CAFO operator constitutes control, and would fall within the bounds of "under the control", independent of any specific agreements.

Liquid manure handling system means a system that collects and transports or moves waste material with the use of water, such as in washing of pens and flushing of confinement facilities. This would include the use of water impoundments for manure and/or wastewater treatment.

Manure is defined to include manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

Minimum Design Storage Capacity shall mean the capacity required to contain all manure, litter, and process wastewater (process wastewater includes runoff which has come into contact with animal waste) generated during the storage period; the runoff from a 25-year, 24-hour rainfall event; any net positive amount from normal precipitation less evaporation during the storage period; and any additional storage needed to meet management goals or other regulatory requirements. The storage period must be no less than the maximum length of time between each planned land application or disposal events.

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.

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 storm water can be contained by the structure.

Process wastewater means water directly or indirectly used in the operation of the CAFO 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 CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with or is a constituent of raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

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 containment 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 storm water. 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.

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.

The Act means Federal Water Pollution Control Act as amended, also known as the Clean Water Act as amended, found at 33 USC 1251 et seq.

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.

Waters of the United States means: (1) all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (2) all interstate waters, including interstate wetlands; (3) all other waters such as intrastate lakes, rivers, and streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (a) which are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or, which are or could be used for industrial purposes by industries in interstate commerce; (4) all impoundments of waters otherwise defined as waters of the U.S.; (5) tributaries of waters identified in (1) through (4) of this definition; (6) the territorial sea; and (7) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in items (1) through (6) of this definition.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101**

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. § 1251, et. seq.; the "Act"), authorization is given to:

**Morgan Feedlot, LLC
RR1 Box 111
Walthill, NE 68067**

Standard Industrial Code (SIC2) = 0211

to discharge from a Concentrated Animal Feeding Operation (CAFO) located at:

S ½ Section 18, Township 25N, Range 9E
Thurston County, Nebraska


to receiving waters named: Unnamed tributary to South Omaha Creek (segment MT1-12170)

only if the CAFO is operated in accordance with the effluent limitations, best management practices, and other requirements and conditions set forth herein. Compliance with this permit will prevent most discharges from the CAFO production area and the land application areas used by the CAFO. Authorization for discharge is limited to when precipitation causes an overflow from a properly designed, constructed, operated, and maintained runoff control system consistent with the requirements of this permit.

This permit shall become effective on February 1, 2009.

This permit and the authorization to discharge shall expire at midnight, January 31, 2014.

Signed this 18th day of December, 2008.


for William A. Spratlin
Director
Water, Wetlands and Pesticides Division

PART I. EFFLUENT LIMITATIONS AND STANDARDS

A. Facility Description

Morgan Feedlot, LLC is a Concentrated Animal Feeding Operation with approximately **29** acres of open lot pens that are used for the feeding of up to **3,500** head of beef cattle. Runoff from the open lot pens and approximately **7** acres of other contributing drainage area is directed to a runoff holding pond. **Morgan Feedlot, LLC** has plans for adding addition pens for **500** head of cattle that would be located with the area that is tributary to the runoff control system. This would bring the total capacity to **4000** head of cattle. The runoff holding pond has a capacity of approximately **48.8** Acre ft. Solid manure scrapped from the pens, solids removed from debris basins, and the contents of the holding pond are to be applied to the land application areas in accordance with the CAFO's Nutrient Management Plan ("NMP").

B. Description of Discharge Points

There is to be no discharge of pollutants from the production area, except for the limited exception authorized in Part I. C.1. (Technology-based Effluent Limitations) for an overflow from a holding pond.

After this permit is modified to incorporate the terms of the NMP, land application area operations are to be performed in accordance with a NMP so that the only discharge from the land application areas is agricultural storm water runoff.

C. Effluent Limitations and Standards

1. Technology-based Effluent Limitations and Standards - Production Area

There must be no discharge of manure, litter, or process wastewater pollutants into waters of the United States from the production area except as provided in paragraphs 1(a) (i) and (ii) of this section.

(a) *Overflow Discharge* - Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into waters of the United States provided:

- (i) The production area is properly designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the 25-year, 24-hour rainfall event for the location of the CAFO, and;
- (ii) The production area is operated in accordance with the Additional Measures and Records for Production Area, specified in Part I. C.2., and the Best Management Practices, Livestock Waste Storage and Holding Pond Capacity and Operation, specified in Part II. A.1. and 2. of this permit.

2. Additional Measures and Records for Production Area

In addition to the requirements in Part I. C.1. of this permit, the permittee must implement the following additional measures.

(a) *Visual Inspections* -

- (i) Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to debris basins and holding ponds;
- (ii) Daily inspections of all water lines, including drinking water or cooling water lines; and,
- (iii) Weekly inspections of the holding ponds. Such inspections shall include noting the level as indicated by a depth marker installed in the impoundment. Each depth marker must clearly indicate the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event for the location of the CAFO.

(b) *Corrective Actions* - Any deficiencies that are identified in these daily and weekly inspections must be corrected as soon as possible.

(c) *Mortality Handling* - No disposal of animal mortalities in any liquid manure or process wastewater systems. Handle animal mortalities so as to prevent discharge of pollutants to surface water.

(d) *Record Keeping for Production Area* - The permittee must maintain for a period of five years from the date they are created, complete on-site records of:

- (i) implementation of all required additional measures for the production area included in this section (Part I. C.2.) of this permit;
- (ii) the as built 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; and
- (iii) the date, time, and estimated volume of any overflow.

3. Technology-based Effluent Limitations and Standards - Land Application Areas Under the Control of the CAFO Owner/Operator.

- (a) *Nutrient Management Plan* - If the permittee land applies manure, litter, or process wastewater, a nutrient management plan ("NMP") must be developed in accordance with the requirements specified in this Section, Part I.C.3. and Part II. B. (Nutrient Management Plan), and will be implemented in accordance with Part II.E. (Permit to be Reopened and Modified).

- (b) *Manure and Soil Sampling* - Manure and process wastewater must be analyzed at least once annually for nitrogen and phosphorus content, and soil must be analyzed at least once every five years for phosphorus content. The results of these analyses are to be used in determining application rates for manure, litter, and process wastewater.
- (c) *Inspection of Land Application Equipment for Leaks* - The permittee shall periodically inspect equipment used for land application of manure, litter, or process wastewater for leaks.
- (d) *Land Application Setback Requirements* - Application of manure, litter, or process wastewater closer than 100 feet to any down-gradient waters of the United States, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to waters of the United States is prohibited. As a compliance alternative, the permittee may: (i) substitute a 35-foot wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited, for the 100-foot setback; or (ii) demonstrate to EPA Region 7 that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback.
- (e) *Record Keeping Requirements* - The permittee shall maintain for a period of five years complete on-site records, including the site-specific NMP, documenting implementation of all required land application practices, in accordance with the specifications in Part III. B.3(b) of this permit.

PART II. SPECIAL CONDITIONS

A. Best Management Practices

1. Livestock Waste Storage

The permittee shall, at a minimum, provide adequate storage of all manure, litter, and process wastewater, including runoff that has come into contact with animal waste, for a period of no less than the maximum length of time between land applications or offsite transfers of the manure, litter, or process wastewater.

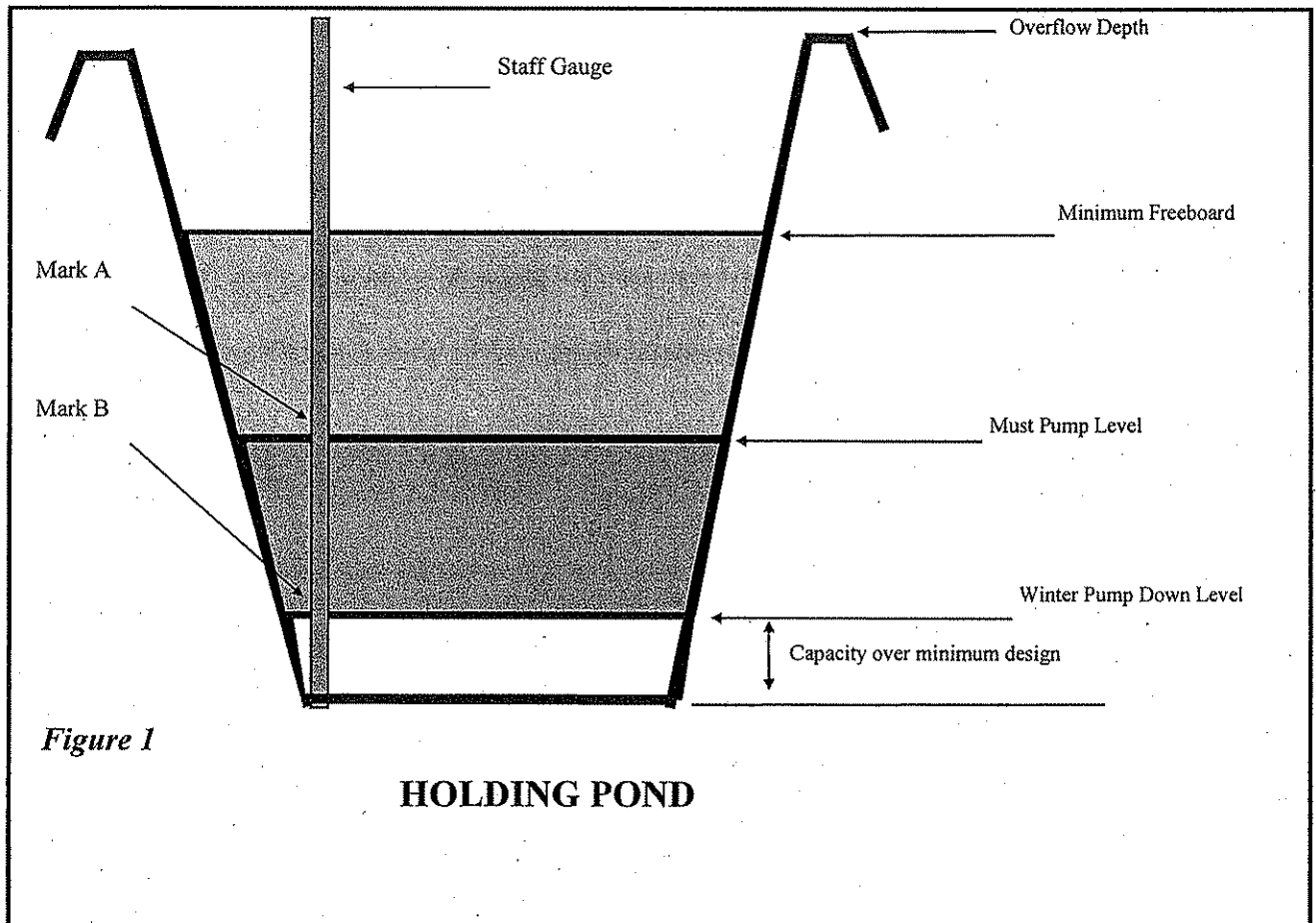
2. Holding Pond Capacity and Operation

(a) The minimum capacity provided for by the "Winter Pump Down" level shall allow for storage of the expected runoff from the 25-year/24-hour storm event, plus the greater of the expected runoff from the month of June average precipitation or the maximum runoff expected between land applications or disposal events. Reference: USDA-NRCS "Agricultural Waste Management Field Handbook."

(b) Dewatering of holding ponds shall begin on the first dewatering day following a precipitation event and continue on all subsequent dewatering days until the "Must Pump" level is reached (see Mark A on Figure 1). The "Must Pump" level indicates the storage volume needed to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event. Capacity of the pumping system shall be adequate to land apply the runoff from the 25-year, 24-hour precipitation event in 14 days or less.

(c) For each day when the water level in the holding pond is above the "Must Pump" level, the permittee shall maintain documentation of (1) land application procedures and information as required in this Permit, Part III.B.3.(b) (Records of *land application procedures*) or (2) the soil and/or weather conditions that made that particular day unsuitable as a dewatering day as required in this Permit, Part III.B.3.(a)(v) (Records *for the production area*).

(d) The holding pond shall be dewatered prior to the winter months to provide capacity indicated by the "Winter Pump Down" level (see Mark B on Figure 1).



B. Nutrient Management Plan

The permittee shall develop a site-specific nutrient management plan ("NMP"). The NMP shall specifically identify and describe best management practices and procedures that are to be implemented to assure compliance with the effluent limitations and standards, and special conditions of this Permit, Part I (Effluent Limitations) and Part II (Special Conditions). The terms of an EPA Region 7 reviewed NMP will be enforceable terms of this Permit in accordance with the Part II. E. (Permit to be Reopened and Modified).

1. The NMP must be developed based on the following three requirements:

- (a) The NMP must incorporate the requirements contained in 40 CFR §412.4, which are specified in Part I.C.3 (Technology-based Effluent Limitations);
- (b) The NMP must be in compliance with EPA Region 7's Technical Standards for Nutrient Management; and,
- (c) The NMP must, to the extent applicable, meet the 9 minimum site-specific measures listed in Part II. B.2.

2. The site-specific NMP must:

- (a) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- (b) Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- (c) Ensure that clean water is diverted, as appropriate, from the production area;
- (d) Prevent the direct contact of confined animals with waters of the United States;
- (e) Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals or contaminants;
- (f) Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;
- (g) Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
- (h) 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,
- (i) Identify specific records that will be maintained to document the implementation and management of the minimum practices described in paragraphs (a) through (h) of this Section, Part II.B.2.

3. Signature

The NMP shall be signed by the owner/operator or other signatory authority in accordance with this Permit, Part V.G. (Signatory Requirements).

4. Schedule and Submittal

The permittee shall develop the NMP in accordance with the following schedule:

- (a) The NMP must be developed by February 27, 2009; and,
- (b) The NMP shall be submitted by February 27, 2009, to EPA R7 at:

CAFO Permit Coordinator
Wastewater Infrastructure and Management Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

- (c) The final NMP will become effective and implemented by the permittee after completion of the Permit reopener and modification procedure specified in this Permit, Part II.E (Permit to be Reopened and Modified).

5. Maintain copy on site

A current copy of the NMP shall be kept on site. In addition, a copy of this NPDES permit is to be maintained on site.

6. Agricultural Stormwater

There is to be no discharge of manure, litter, or process wastewater to waters of the United States 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. Where manure, litter, or process wastewater has been applied in accordance with a site-specific NMP, as specified in 40 CFR § 122.42(e)(1), a precipitation related discharge of manure, litter, or process wastewater from land areas under the control of the CAFO is considered to be an agricultural storm water discharge.

C. Facility Closure

The following conditions shall apply to the closure of lagoons and other earthen or synthetic lined basins and other manure, litter, or process wastewater storage and handling structures.

1. Closure of Lagoons and Other Surface Impoundments:

- (a) No lagoon or other earthen or synthetic lined basin shall be abandoned.
- (b) Lagoons and other earthen or synthetic lined basins shall be maintained at all times until closed in compliance with this section.
- (c) All lagoons and other earthen or synthetic lined basins must be properly closed if the permittee ceases operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of twelve consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either: (i) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or (ii) removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. In either case, the permittee shall notify EPA of the action taken, and shall conduct the routine inspections, maintenance, and record keeping required by this permit as though the structure were in use. Prior to restoration of use of the structure, the permittee shall notify EPA and provide the opportunity for inspection.
- (d) All closure of lagoons and other earthen or synthetic lined basins must be consistent with Natural Resource Conservation Service Conservation Practice Standard 360, Closure of Waste Impoundments, see NE-T.G. Notice 502, Section IV, NRCS-October 2001. Consistent with this standard, the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittees NMP, unless otherwise authorized in writing by EPA.
- (e) Unless otherwise authorized in writing by EPA, completion of closure for lagoons and other earthen or synthetic lined basins shall occur as promptly as possible after the permittee ceases to operate or, if the permittee has not ceased operations, 12 months from the date on which the use of the structure ceased, unless the lagoons or basins are being maintained for possible future use in accordance with the requirements herein.

D. Requirements for the Transfer of Manure, Litter, and Process Wastewater To Other Persons

In cases where CAFO-generated manure, litter, or process wastewater is sold or given away the permittee must comply with the following conditions.

1. Records and nutrient content information:

- (a) Maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted operation;
- (b) Record the name and address of the recipient;
- (c) Provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater; and,
- (d) Retain these records on-site for a period of five years and submit these records to EPA upon request.

E. Permit to be Reopened and Modified

1. Inclusion of NMP Terms:

After the Nutrient Management Plan (NMP) has been submitted by the permittee to EPA Region 7 and following EPA's review of the NMP and tentative decision to accept the NMP, the permit will be reopened and modified under the regulations at 40 CFR Section 124 and Section 122.62. If the Regional Administrator tentatively decides to modify the permit to incorporate the terms of an enforceable NMP, he or she will follow the regulations at 40 CFR Section 124.6 to propose changes and provide public notice and comment. This permit condition is in accordance with the decision by the Second Circuit Court of Appeals in Waterkeeper Alliance et al. v. EPA 399 F.3d 486 (2nd Cir. 2005).

2. Waterbody Impairment

If a pollutant that may be discharged by the permittee is the basis for a 303(d) listing for impairment of a receiving waterbody and there is a Total Maximum Daily Load or other pertinent information developed for that pollutant, the permit may be reopened and modified under the regulations at 40 CFR Section 124 and Section 122.62 to propose changes to permit conditions relating to that pollutant and provide public notice and comment.

Part III. INSPECTION, MONITORING AND RECORD KEEPING REQUIREMENTS

A. Notification of Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport, and/or Application

1. Discharge of pollutants

If, for any reason, there is a discharge of pollutants to a water of the United States, the permittee is required to:

(a) make oral notification within 24 hours to EPA Region 7 by calling the Region 7 Action Line at 1-800-223-0425 and asking for the Chief, Water Enforcement Branch, or if after regular business hours or on a weekend or holiday by calling the EPA Spill Hotline at (913) 281-0991; and,

(b) notify EPA in writing within five (5) days of the discharge from the facility. In addition, the permittee shall keep a copy of the notification submitted to EPA together with the other records required by this permit. The discharge notification shall include the following information:

- (i) A description of the discharge and its cause, including a description of the flow path to the receiving water body;
- (ii) An estimate of the flow and volume discharged;
- (iii) A description of the impact on the receiving water body;
- (iv) The period of the discharge, including starting dates and times, and if not corrected, the anticipated time it is expected to cease and the steps being taken or to reduce, eliminate, and prevent recurrence of the discharge; and,
- (v) The written discharge notification shall be submitted to the following address:

Indian Country Compliance Coordinator
Water Enforcement Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

B. General Inspection, Monitoring, and Record Keeping Requirements

1. Inspections

The permittee is required to have routine inspections conducted of the production area, irrigation distribution system, and land application areas as follows:

- (a) Daily inspections at the production area of water lines, including drinking water or cooling water lines;
- (b) Weekly inspections at the production area of the manure, litter, and process wastewater impoundments. The inspection record must note the level in liquid impoundments as indicated by the depth marker;
- (c) Weekly inspections at the production area of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the facilities;
- (d) Inspections at least once a year to determine the sludge and sediment accumulation level in liquid impoundments;
- (e) Inspections are required prior to operation of the equipment used to apply manure, litter or process wastewater, including the irrigation distribution system and the water source protection equipment; and,
- (f) The irrigation system and other application equipment must be monitored while in use to insure proper operation.

2. Markers and Measurements

- (a) Daily precipitation shall be recorded from a rain gauge that is kept on site and properly maintained.
- (b) Maintenance of a permanent marker (staff gauge or marking device) is required in each holding pond to measure the liquid depth in increments of one foot or less and to measure accumulations of manure, litter, and process wastewater. Permanent markers must comply with the following:
 - (i) Be made of durable material;
 - (ii) Permanently fixed and referenced to a permanently fixed benchmark or fixed elevation reference point adjacent to, and outside of, the waste containment area;
 - (iii) Located where the depth marks can be easily and safely viewed for facility management and inspections; and,
 - (iv) Be clearly marked with the following levels:
 - Freeboard level (Freeboard is the elevation difference between the designed full depth and the overflow depth.);

- The “Must Pump” level, indicating the volume needed to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event.
- The “Winter Pump Down” level, indicating the volume needed for the minimum design storage capacity, which must be available prior to the start of the storage period. The minimum storage period volume shall not be less than that needed to provide adequate storage through the winter months.

3. Record Keeping

Production area and land application area records must be maintained at the CAFO for a period of five years from the date they are created. Records of the following information are required:

(a) Records *for the production area* –

- (i) A record of inspections as required in this Section, Part III. B. 1 (a) – (d), including dates and results;
- (ii) Any actions taken to correct deficiencies found as a result of required inspections. For any deficiencies not corrected within 30 days, the records must include an explanation of the factors preventing immediate correction;
- (iii) Weekly measurements of the depth of the manure and process wastewater in the holding pond as indicated by the depth marker;
- (iv) Measurements of the liquid levels in the holding pond following:
 - A precipitation event; and,
 - Land application of livestock wastes from the holding pond;
- (v) Soil and weather conditions that demonstrate that a particular day was unsuitable as a dewatering day if the water level in the holding pond was above the “Must Pump” level and the permittee did not perform land application;
- (vi) Documentation of the as built design of any manure or litter storage structures;
- (vii) Total design capacity for liquids and solids;
- (viii) All sampling and test results related to the design and construction of the facility; and,
- (ix) Approximate number of days of storage capacity, demonstrating that the holding pond capacity is adequate to meet the design storage requirements,

(b) Records of *land application procedures and information, including* –

- (i) The nutrient management plan (when completed), including the phosphorus risk assessment for each field and the test methods used to sample and analyze manure, litter, process wastewater, and soil;
- (ii) Expected crop yields for the land application areas;
- (iii) Explanation of the basis for determining manure, litter, and process wastewater application rates;
- (iv) Method(s) used to apply the manure, litter, or process wastewater;

- (v) Date(s) manure, litter, or process wastewater was applied to each field;
- (vi) Weather conditions at the time of application and for 24 hour prior to and following application;
- (vii) If nutrients are applied to frozen, snow covered, or saturated soil, then the permittee shall record the reasons why the risk of runoff did not exist for a specific field. The Region 7 Technical Standards for Nutrient Management require that nutrients shall not be applied to frozen, snow covered, or saturated soil if the potential risk for runoff exists, and in addition prohibit application to a field with a high phosphorus risk assessment rating under those circumstances;
- (viii) Documentation and calculations showing the total nitrogen and phosphorus planned and actually applied to each field;
- (ix) Results from manure, litter, process wastewater, irrigation water, and soil sampling and testing; and,
- (x) Dates of manure application equipment inspection as required in this Section, Part III. B. 1. (e) and (f).

(c) Other Records Required -

- (i) Mortality management, chemical management, and related practices used by the operation;
- (ii) The completed permit application; and,
- (iii) Discharges or overflows, including date, time, and estimated volume.

PART IV. ANNUAL REPORTING REQUIREMENTS

A. Reporting Deadline

The permittee must submit an annual report to EPA by **JANUARY 31ST** of each year. The annual report shall be submitted to EPA R7 at:

Indian Country Compliance Coordinator
Water Enforcement Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

B. Contents of Annual Report

The annual report must include the following information:

1. The maximum number and type of animals confined at any one time during each month of the year, whether in open confinement or housed under roof;
2. Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
3. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);
4. 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;
5. 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; and,
6. A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner.

PART V. STANDARD PERMIT CONDITIONS

A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR Part 122.41, et. seq., this permit incorporates by reference all conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, as well as all applicable regulations.

2. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation, and reissuance; or for denial of a permit renewal application.

3. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The Permittee shall submit a

new application to the U. S. Environmental Protection Agency, Region 7, at least 180 days before the expiration date of this permit. The application shall be sent to:

CAFO Permit Coordinator
Wastewater Infrastructure and Management Branch, WWPD
U.S. EPA REGION VII
901 N. 5th Street
Kansas City, KS 66101

The terms and conditions of this permit continue in force under 5 U.S.C. § 558 (c) until the effective date of the new permit (or permit denial) only if the permittee has submitted a timely and complete application under 40 C.F.R. § 122.21 for a renewal permit and the Permitting Authority, through no fault of the permittee, does not issue a new permit (or deny the permit) before the expiration date of this permit. The permit continued under 5 U.S.C. § 558(c) remains fully effective and enforceable, subject to the actions set forth in 40 C.F.R. § 122.6(c).

4. Toxic pollutants

The permittee shall comply with effluent standards and prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request 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. 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/Tribal or local laws or regulations.

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

8. Criminal and Civil Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the Permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

9. State/Tribal 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/Tribal law or regulation under authority preserved by Section 510 of the Act.

10. 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.

B. Proper Operation and Maintenance

1. Need to halt or reduce activity not a defense

It shall not be a defense for a permittee in an enforcement action to plead that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. 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.

3. 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. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

C. Monitoring and Records

1. Inspection and entry

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

- (a) Enter 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;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) Inspect, at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and,
- (d) Sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report, or application. This period may be extended by request of the permitting authority at any time. Data collected on site, data used to prepare annual reports, copies of annual reports, and a copy of this NPDES permit must also be maintained on site.

4. Records content

Records of monitoring information shall include:

- (a) The date, exact place, and time of sampling or measurements;
- (b) The individual(s) who performed the sampling or measurements;
- (c) The date(s) analyses were performed;
- (d) The individual(s) who performed the analyses;
- (e) The analytical techniques or methods used; and,
- (f) The results of such analyses.

D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the EPA, Region 7, as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (a) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 122.29(b); or,
- (b) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification also applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 122.42(a)(1); or,
- (c) The alteration or addition results in a significant change in the permittees manure use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit. This includes notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to a nutrient management plan.

2. Anticipated Noncompliance

The permittee shall give advance notice to the EPA, Region 7, of any planned physical alterations or additions or changes in activity which may result in noncompliance with requirements in this permit.

3. Transfers

A permit may be automatically transferred to another party if:

- (a) The Permittee notifies the EPA of the proposed transfer at least 30 days in advance of the proposed transfer date;
- (b) The notice includes a written agreement between the existing and new Permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,
- (c) The EPA does not notify the existing Permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part b., above.

4. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

5. Twenty-four hour Reporting

The permittee shall report any noncompliance that may endanger human health or the environment. Any information must be provided orally within 24 hours from the time that the permittee becomes aware of the circumstances to the Chief, Water Enforcement Branch, at

phone number (800) 223-0425. Reports of noncompliance under this paragraph may be made to the EPA Spill Hotline at (913) 281-0991 if such noncompliance is discovered after regular business hours or on a weekend or holiday, or response assistance from EPA is requested.

A written submission shall also be provided to the EPA, Region 7, within five (5) days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

- (a) A description of the noncompliance and its cause;
- (b) 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,
- (c) Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

6. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under above and of this section, at the time that annual reports are submitted. The reports shall contain the information listed in this Section, Part V.D.5.

7. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the EPA Region 7, it shall promptly submit such facts or information.

E. Bypass of Treatment Facilities

1. Definitions:

- (a) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- (b) Severe property damage means 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 production.

2. Bypass not exceeding limitations:

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. These bypasses are not subject to the provisions of E.3. and E.4. below.

3. Notice:

- (a) Anticipated bypass. If the permittee knows in advance of the need to bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
- (b) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required by this Section, Part D.6. (24-hour notice).

4. Prohibition of bypass:

- (a) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
 - (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (ii) There are 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 adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,
 - (iii) The permittee submitted notices as required under this Section, E.3.
- (b) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed this Section E.4.(a).

F. Upset

1. Definition:

Upset means 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, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation

2. 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 F.3. of this part are met. In any enforcement proceedings the permittee seeking to establish the occurrence of an upset has the burden of proof. No determination made during administrative review of claims that non-compliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., permittee will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for non-compliance with technology-based permit effluent limitations).

3. 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 cause(s) of the upset;
- (b) The permitted facility was at the time being properly operated; and
- (c) The permittee submitted notice of the upset as required in this Section, D.6.b. (24 hour notice).
- (d) The permittee complied with any remedial measures required under this Section, B.2.

G. Signatory requirements

All applications, reports, or information submitted to the EPA Region 7 shall be signed and certified consistent with 40 CFR 122.22:

1. All permit applications shall be signed as follows:

- (a) For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (i) 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
 - (ii) The manager of one or more manufacturing, production, or operating 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; or
- (b) For a partnership or sole proprietorship: By a general partner for a partnership or the proprietor, respectively.

2. All reports shall be signed as follows:

All reports required by the Permit and other information requested by the EPA Region 7 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:

- (a) The authorization is made in writing by a person described above;
- (b) The authorization specifies 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, position of equivalent responsibility, or any individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,
- (c) The written authorization is submitted to the EPA Region 7

H. 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.

I. Availability of Reports

Any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

J. Penalties for Violations of Permit Conditions

The Act provides that any person who violates Sections 301, 302, 306, 307, 308 or 405 of the Act, or any permit condition or limitation implementing such Sections in a permit issued under Section 402 of the Act, is subject to civil penalties not to exceed \$32,500 per day for each violation under Section 309 of the Act. Any person who willfully or negligently violates Sections 301, 302, 306, 307, or 308 of the Act, or any permit condition or limitation implementing such Sections, may be subject to a fine or imprisonment pursuant to Section 309(c) of the Act. Except as provided in sections II-B-3, Bypass of Treatment Facilities, and II-B-4, Upset, of this permit, nothing in this permit shall be construed to relieve the Permittee of civil or criminal liability for noncompliance.

PART VI. DEFINITIONS

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) 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 (ii) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Application means the EPA standard national forms for seeking coverage under an NPDES permit, including any additions, revisions or modifications to the forms; e.g. for NPDES individual permits, Form 1 and 2B pursuant to 40 CFR 122.1(d).

Concentrated animal feeding operation (CAFO) means an "animal feeding operation" which meets the criteria in 40 CFR Part 122.23, or which the Director designates as a significant contributor of pollution pursuant to 40 CFR 122.23.

Dewatering Days shall mean those days which have suitable weather and soil conditions for land application of accumulated livestock wastes.

Suitable soil conditions do not exist if:

- (a) the minimum amount to be applied through the irrigation system exceeds the capacity of the soil to store the moisture; or
- (b) the application rate exceeds the rate of water movement into the soil (soil infiltration rate). High soil moisture or frozen soils will reduce soil infiltration rates.

Suitable weather conditions do not exist if:

- (a) the air temperature is freezing; or
- (b) a precipitation event is occurring or, a precipitation event, capable of producing runoff and erosion, is forecast within 24 hours of the time of planned application.

Holding Pond means an impoundment made by constructing an excavated pit, dam, embankment or combination of these, for temporary storage of liquid livestock wastes, generally receiving runoff from open lots and contributing drainage area.

Land application means the application of manure and/or wastewater onto or incorporation into the soil.

Land application area means land under the control of a CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied. The act of application by the CAFO operator constitutes control, and would fall within the bounds of "under the control", independent of any specific agreements.

Liquid manure handling system means a system that collects and transports or moves waste material with the use of water, such as in washing of pens and flushing of confinement facilities. This would include the use of water impoundments for manure and/or wastewater treatment.

Manure is defined to include manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

Minimum Design Storage Capacity shall mean the capacity required to contain all manure, litter, and process wastewater (process wastewater includes runoff which has come into contact with animal waste) generated during the storage period; the runoff from a 25-year, 24-hour rainfall event; any net positive amount from normal precipitation less evaporation during the storage period; and any additional storage needed to meet management goals or other regulatory requirements. The storage period must be no less than the maximum length of time between each planned land application or disposal events.

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.

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 storm water can be contained by the structure.

Process wastewater means water directly or indirectly used in the operation of the CAFO 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 CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with or is a constituent of raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

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 containment 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 storm water. 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.

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.

The Act means Federal Water Pollution Control Act as amended, also known as the Clean Water Act as amended, found at 33 USC 1251 et seq.

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.

Waters of the United States means: (1) all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (2) all interstate waters, including interstate wetlands; (3) all other waters such as intrastate lakes, rivers, and streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (a) which are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or, which are or could be used for industrial purposes by industries in interstate commerce; (4) all impoundments of waters otherwise defined as waters of the U.S.; (5) tributaries of waters identified in (1) through (4) of this definition; (6) the territorial sea; and (7) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in items (1) through (6) of this definition.