

Responsiveness Summary

Concentrated Animal Feeding Operation General Permit Permit No. MIG019000

The National Pollutant Discharge Elimination System (NPDES) General Permit for Concentrated Animal Feeding Operations (CAFOs) was issued and took effect on April 1, 2010. The issued CAFO General Permit includes several revisions to the public-noticed version of the permit.

An NPDES permit may be contested within 60 days of issuance by filing a petition for a Contested Case Hearing with the State Office of Administrative Hearings and Rules of the Michigan Department of Energy, Labor, and Economic Growth. A petition may be obtained from the Internet at <http://www.deq.state.mi.us/documents/deq-oah-eqp0201.dot>.

The draft CAFO General Permit was public noticed on January 5, 2010, and a public hearing was held on February 8, 2010.

The public hearing was attended by about 20 people, although only 8 were not Michigan Department of Natural Resources and Environment (Department) or Michigan Department of Agriculture (MDA) employees. Three oral statements were made during the hearing. During the public comment period, which ended on February 16, 41 written comments were received, including 26 comments that either supported other letters or were copies of a form letter (some of each contained additional individual comments). Written comments were also received from the United States Environmental Protection Agency (USEPA).

Below is a discussion of the comments received. Some comments were received regarding matters that were not within the regulatory authority of the Department to directly consider in the decision of whether to issue an NPDES permit, and other comments were of a commentary nature on CAFOs in general rather than on the CAFO General Permit. Comments are abbreviated or paraphrased and similar comments are combined, when possible.

Comments on Michigan's CAFO Program

1. **Comment:** The Department has chosen to be more restrictive than federal regulations by requiring permits of all CAFOs instead of just those which discharge or propose to discharge. This additional unfair burden is punitive to those who have not discharged and discourages farm expansions and start-ups. Agriculture is the one bright spot in Michigan's economy. It is not reasonable or necessary to penalize those who make Michigan agriculture work. This is an additional burden on both the Department and the industry at a time when such a burden is not affordable. Most CAFOs have been under the current permit only a couple of years but will now have to adjust to a new permit.

Response: At the time of adoption, Michigan's CAFO rules mirrored federal law that required all CAFOs to obtain permits. Federal law changed in late 2008 to require permits only for CAFOs that actually discharge or propose to discharge. The Department has been prohibited by the legislature from promulgating rules under Part 31, Water Resources Protection, since 2005. Therefore, the legislature would need to relax this requirement before Michigan's CAFO rules could be amended in a manner to mirror the federal requirements. Michigan's current CAFO rules allow a CAFO to apply for a "no potential to discharge determination" (NPTDD). If an NPTDD has been granted, then the CAFO does not need to obtain an NPDES permit. Twelve CAFOs in Michigan have obtained an NPTDD. Federal laws and rules set minimum regulatory requirements for CAFOs nationwide; however, states may adopt more stringent requirements if considered necessary. The Department disagrees with the comment claiming that expansions and start-ups are being discouraged by the Department's CAFO permitting program, as we continue to receive permit applications for new CAFOs. The Department does not expect the new CAFO General Permit will force major operational changes at currently-permitted CAFOs.

2. **Comment:** Since Michigan's CAFO rules require permits for all CAFOs but federal rules do not, reissue the current permit for CAFOs that do not discharge and use the new permit for CAFOs that have had a discharge within the last five years. As an alternative to two permits, the new permit could be revised to require public notice of new fields only at CAFOs that discharge or propose to discharge.

Response: Federal and state rules and laws require that many requirements be included in all NPDES permits and certain industry-specific requirements be included in all CAFO permits. The Department cannot pick and choose which of those requirements are to be imposed on which CAFO based on whether or not a specific CAFO had a discharge.

Comments on CAFOs in General

3. **Comment:** Use much more economic incentives pointed toward environmentally responsible farming which encourages progressive methods and less dependency on things like lagoons.

Response: The Department is involved in economic incentive programs. Anaerobic digester start-up grants are available. Beyond current programs, the legislature would need to provide the authority and funding to institute such a program. However, Department involvement with such programs will not alleviate the need to implement a CAFO permit program, nor will such programs eliminate the need for storage structures at individual CAFOs.

4. **Comment:** Putting the MDA in charge of groundwater quality is not only wrong, it is not their job..

Response: The MDA is not in charge of groundwater quality and the Department is not aware of any plans to move groundwater protection responsibilities to the MDA.

5. **Comment:** All CAFOs should be required to obtain groundwater permits for liquid manure systems.

Response: The Department has no authority to require this at this point in time. Michigan's rules exempt groundwater discharges at AFOs with less than 5,000 animal units from groundwater permits; however, AFOs with 5,000 animal units or more must have permits for groundwater discharges. Land application is considered a groundwater discharge.

Comments on the Permit Application and Issuance Process

6. **Comment:** The Department should require a New Source Determination and an environmental impact analysis and statement for new and expanding CAFOs, especially if tile lines are present at the production area. This is based on requirements of the USEPA Region 6 draft general permit for CAFOs in Oklahoma.

Response: The Oklahoma permit is being issued by the USEPA, so the issuance is a federal action subject to the National Environmental Policy Act (NEPA) and, therefore, requires an Environmental Impact Statement or Finding of No Significant Impact. The Michigan CAFO General Permit is being issued by the state, so there is no federal action that would trigger an NEPA review.

7. **Comment:** CAFO applicants should be required to postal mail the public notice for their CAFO permit to all addresses within the zip code where they are located.

Response: This extends well beyond the legal requirements for public notice. The current public notice process meets legal requirements and is considered adequate to ensure the opportunity for timely public involvement in the CAFO permit issuance process.

8. **Comment:** CAFO discharge permit applications should not be treated as all equal. Some sites are not suitable for a CAFO and others need additional restrictions. The Department should require individual permits for many more CAFOs.

Response: The CAFO General Permit provides all the requirements necessary for a CAFO to operate in an environmentally responsible manner. Individual permits are required in certain specific situations, including some enforcement cases, where permittees want alternate requirements, new CAFOs above a certain size, or CAFOs above 5,000 animal units that require a groundwater permit. The Department has no authority to specify where CAFOs may or may not locate; however, if the CAFO General Permit is not considered adequate from a water quality perspective for a particular CAFO, the Department can exercise two options: require the CAFO to obtain an individual permit, or process a denial of the application.

9. **Comment:** How is the Department going to bring existing CAFOs in the state into compliance – to actually get them to apply for permits? Do we know how many are operating without permits?

Response: All CAFOs known to the Department have applied for permit coverage. The only CAFOs operating without a permit are the few CAFOs whose applications are still pending.

10. **Comment:** Any applicant with outstanding fines, violations, or judgments against their other existing facilities should not be allowed to expand and their application should be denied. This change would result in increased compliance.

Response: The Department has no legal basis to deny a permit on that basis; however, the Department may withhold permit reissuance to a particular CAFO that is considered to be in violation of their current permit requirements.

General Comments on the Permit

11. **Comment:** The Department should monitor for and regulate the presence of antibiotics, steroids, and related chemicals in the CAFO waste stream. Damage from these chemicals cannot be assessed unless it is known what is being discharged.

Response: Properly-managed large CAFO waste has not been shown to pose a health threat due to pharmaceuticals or other similar chemicals. The Department is aware of such concerns and has conducted or sponsored a limited number of monitoring studies that were at least partly designed to assess pharmaceuticals in ambient waters near CAFOs. State-of-the-art science (analytical chemistry, toxicology, environmental fate) limits the Department's ability to effectively monitor and regulate pharmaceuticals. The Department continues to remain abreast of ongoing research relative to this emerging water pollution issue.

12. **Comment:** The draft permit should have a different number or other simple way to keep the old and new permits separate other than the expiration date.

Response: Previously, general permit numbers alternated each time a particular general permit was reissued. However, the Department has determined that general permit numbers should not alternate but instead, keep the same number each reissuance just like individual permits. To differentiate between different permits with the same number, the expiration date is used. The previous CAFO General Permit is MIG019000, expiring 4-1-2010. The new CAFO General Permit is MIG019000, expiring 4-1-2015.

Comments on Waste Storage Structures Section, Part I.A.4.a.

13. **Comment:** The Department should develop a review and construction permit for storage structure evaluation and construction, along with its own construction standards in addition to NRCS 313. These standards should include a prohibition against aboveground storage structures with earthen embankments. It should also include that perimeter drains and monitoring wells be installed around storage structures to ensure liner integrity. The wells and drains should be monitored periodically and the results reported to the Department.

Response: The Department believes that the NRCS 313 practice standard, Waste Storage Facilities, provides adequate standards for engineering and construction of storage structures. Earthen embankments constructed in accordance with NRCS 313 can provide safe containment of wastes. The permittee may request approval to install perimeter wells and drains to demonstrate liner integrity; however, the Department is not proposing to make that mandatory and believes that the procedures in the current guidance for storage structure evaluation will produce adequate results.

14. **Comment:** If stockpiling were to be allowed, it should only be at the production area, with secondary containment, with all runoff directed to a storage structure, and never closer than one-half mile to a residence.

Response: Stockpiling is only allowed at production areas with proper containment and collection of all leachate and runoff. The Department has no authority to require a minimum distance to a residence.

15. **Comment:** Guidance for the evaluation of existing storage structures at previously-permitted CAFOs was only recently posted on the Department Web site. A few due dates have passed, a few more are due this year, and most are due in less than one year. CAFOs should be given more time to complete the evaluations.

Response: Guidance has been available on the Department Web site for several years. However, since the guidance has been under revision for a while and some facilities may have been told to wait for the new guidance, the Department will be addressing this issue to allow additional time for completion of the storage structure evaluations.

Comments on Best Management Practices Section, Part I.A.4.b.1) through 6)

16. **Comment:** The new language specifying that conservation practices must be listed in the CNMP should be deleted.

Response: This new language is needed to bring the CNMP requirements into compliance with both state and federal rules, which say that the CNMP shall identify specific conservation practices to control the runoff of pollutants.

17. **Comment:** Change the frequency of water line inspections from daily to weekly.

Response: Federal regulations require daily water line inspections. The language in the CAFO General Permit does provide some flexibility in how CAFOs accomplish their water line inspections.

Comments on Land Application Section, Part I.A.4.b.7)

18. **Comment:** The permit requires tile outlets to be visually monitored. Water from tiles flowing after land application should be sampled and analyzed for compliance with water quality standards and the results submitted to the Department. Fields where water quality standards are exceeded should be improved to ensure that surface waters are not degraded.

Response: The Department has chosen to not require that permittees sample and analyze effluent from tile drain outlets. Permittees must observe tile drain outlets and report suspected discharges. The Department may then conduct sampling and monitoring depending on the specific situation. If an unauthorized discharge through tiles is discovered, the Department will require the permittee to address the situation to prevent future discharges. This may include requiring the permittee to improve the field or take other control actions acceptable to the Department based on the specific situation.

19. **Comment:** Vegetative buffers need to be inspected prior to land application to ensure that the buffer is intact and that no erosion, animal trail, or other change provides a path to surface water.

Response: This is required by paragraph C) on Page 10 of the CAFO General Permit.

20. **Comment:** The Department is aware that land-applied wastes with high BOD, such as food processing wastes, can result in leaching of metals and resulting groundwater contamination. As a result, the Department requires groundwater monitoring for such activities. A similar approach should be used for the land application of CAFO wastes.

Response: The food processor situations are not analogous to CAFOs because they are the result of long-term excessive application of waste to the same fields, while our CAFO permits limit application rates and the new CAFO General Permit adds additional requirements to ensure proper and safe land application of CAFO waste. The Department is aware of this issue and intends to conduct additional monitoring studies to further evaluate metal liberation due to land applied CAFO waste, as resources allow.

21. **Comment:** The permit requires annual sampling and analysis of CAFO waste but only six months of storage. It seems to follow that sampling should be twice a year (once per fill and draw cycle). Samples must be representative and not just the top few inches.

Response: CAFOs do not follow a predictable fill and draw cycle. Waste is added continuously and withdrawn occasionally as they are able to land apply wastes, mostly in the spring and fall. The CAFO General Permit requires that samples be representative of the material to be land applied. The Department believes annual sampling is sufficient and little would be gained from twice yearly sampling.

22. **Comment:** All fields should be reassessed in accordance with the field-by-field assessment requirements in the new permit.

Response: Assessments will need to meet the language in the new CAFO General Permit. The field assessment language was rewritten to better clarify and explain what was expected in the previous CAFO General Permit, including a consideration of slopes. The only new requirement is that assessments must show any fields or parts of fields that are proposed for application when the ground is frozen or snow-covered. The Department expects that many assessments are adequate; however, some may need modification.

23. **Comment:** The permit should state that all documents kept on the farm in accordance with permit requirements are subject to Freedom of Information Act requests.

Response: The Department has no authority to require that privately- held documents be subject to Freedom of Information Act requests.

24. **Comment:** The Department should develop spreadsheets for CAFOs to use for recording monitoring data.

Response: The Department has developed several forms for CAFOs to use for recording monitoring data and those forms are available on the Department's CAFO Web site.

25. **Comment:** The permit should not allow stockpiling of manure.

Response: The CAFO General Permit does not allow stockpiling outside of the production area. Stockpiling at the production area would be storage and must meet all associated CAFO General Permit requirements.

26. **Comment:** Land application to frozen or snow-covered ground should be prohibited and the storage volume requirement should be increased by three months. Nutrients applied to frozen or snow-covered ground pass into groundwater and surface waters, and waste valuable nutrients.

Response: Land application to frozen or snow-covered ground is allowed only to low-risk fields under limited circumstances. The current six months storage requirement is designed so that CAFOs can avoid land application of wastes to frozen and snow-covered ground, since it also requires that six months of volume be available at the beginning of winter. However, CAFOs may take the opportunity to land apply wastes under the proper conditions to frozen and snow-covered ground in order to avoid a situation where their storage structures may become overfilled.

27. **Comment:** A complete and detailed account of how CAFO waste is to be applied is needed prior to approval. The Department and citizens must be notified of where manure is being applied.

Response: The CNMP, as required by the CAFO General Permit, must be submitted with permit applications and will be public noticed. This is the most up-to-date and complete information on land application of CAFO waste available. The annual report is required to contain a spreading plan of where manure will be applied during the next 12 months, but last-minute decisions based on weather, crops, equipment/contactor availability, field availability, and other factors will dictate when waste will be applied and may require changes to the plan. To require all CAFOs to notify the Department just prior to land application would be burdensome for the Department. A few troublesome CAFOs have been required to do that via consent orders or permit requirements, but the Department has not found that information always useful.

28. **Comment:** Land owners (not just farm renters) must be aware of and agree to the application of manure.

Response: This is outside the scope of the CAFO General Permit and is between the land owners and renters.

29. **Comment:** The Department should allow increased flexibility or incentives for manure applications that are directly injected. Many complaints received by the Department regarding CAFOs, such as flies and odors, are the result of surface-applied manure. Direct injection reduces odor, reduces application rates, and increases nutrient utilization. Incentives could include increased flexibility in application timing due to weather, such as using forecasts based on the 12-hour prediction or allowing reduced setbacks to lower risk conduits to surface water.

Response: The Department supports and encourages the practice of direct injection of CAFO wastes into the soil. However, other CAFO waste application techniques, when conducted in compliance with the CAFO General Permit, are also protective of water quality.

30. **Comment:** Michigan should follow the federal rule where a precipitation-related discharge from fields managed in accordance with appropriate nutrient management practices is not a discharge that requires a permit.

Response: Michigan's requirements related to this issue are contained in rule. In that regard, see the answer to comment number 1. The Department does not believe that such a revision to state rules will assure sufficient protection for Michigan's valuable water resources, including the Great Lakes.

31. **Comment:** Winter land application of manure should not be prohibited.

Response: The Department has no plans to prohibit applications to frozen or snow-covered ground. The language in the new CAFO General Permit has not changed significantly from the previous CAFO General Permit.

32. **Comment:** New fields must be public noticed in accordance with 40 CFR 122. Maintain the existing language in the draft permit regarding public noticing of new fields. A properly operated CAFO in compliance with their permit should not have excess waste or manure to spare that needs immediate disposal to a new field. The 12-month spreading plan required by the permit appears to require that all waste is "spoken for" or allocated a year in advance. New fields should not be needed until the following year. If a new farm wants CAFO waste, they can obtain their own equipment or hire a contact applicator and obtain the waste via the manifesting process.

Response: The Department is not proposing changes to the public noticing requirement for new fields contained in the public-noticed permit.

33. **Comment:** Michigan should consider an acreage threshold of 10 percent of the total land base in a plan before requiring that new fields be public noticed. The Department should implement a preapproval process so fields can be used prior to completing the public notice process.

Response: A comment was made during a stakeholder meeting that another state had a 10 percent threshold; however, the commenter later told the Department that they could not verify that statement. The USEPA has told the Department that federal rule clearly requires that all new fields must be public noticed, and there is no minimum threshold. The Department does not expect that this requirement will cause significant problems. NPDES regulations offer no option for any kind of preapproval process.

Comments on the CNMP Section, Part I.A.5.

34. **Comment:** We remind the Department that the recent decision by the 2nd Circuit Court of Appeals requires regulatory review of CNMPs and field assessments before a permit is issued.

Response: The Department will perform a meaningful review of each CNMP, including the field-by-field assessment component, prior to issuance of a COC.

35. **Comment:** All records kept "with" the CNMP should be made available to the public in the event of a spill or a violation of water quality standards.

Response: The CAFO General Permit requires that certain information is submitted to the Department. Additional information may be requested in the event of a discharge, depending on the specifics of the violation. All such information is available to the public.

36. **Comment:** Maintain current permit language regarding which items are kept "in" the CNMP versus kept "with" the CNMP. This is necessary so that the proper information is available to the public when the CNMP is public noticed.

Response: The Department is not proposing any changes to the aforementioned language.

37. **Comment:** Since the Department intends to implement the new federal rules for all CAFOs and not just those that discharge, then there is no need for CNMP providers to be certified since the Department is choosing to review all CNMPs.

Response: If CNMPs were not written by certified providers, there could be an increase in errors. The Department would require the CNMP to be corrected and the CAFO would incur extra expense. The CAFO could not spread manure while the CNMP was being revised, which could impact their ability to operate. It is also possible that some errors may go undetected. CAFO operators would then follow the erroneous CNMP and either under-apply manure, causing additional land application costs and poor crop growth, or over-apply manure, wasting nutrients and possibly resulting in discharges and enforcement actions.

38. **Comment:** Many factors related to manure applications are considered substantial changes to the CNMP that will require public notice. These public notices will happen year round and must be completed in a timely manner. How does the Department propose to handle this large amount of new work?

Response: The Department believes that only new fields will require public notice. Other factors such as crops and application rates are listed in the CAFO General Permit. A public notice would be required only if a crop not listed in the CAFO General Permit is added. The Department will develop a procedure and allocate the necessary resources to public notice CNMP substantial changes in a timely manner.

Comments on the Requirements for Land Application Not Under the Control of the CAFO Permittee (Manifesting) Section, Part I.B.8.

39. **Comment:** Manifesting should be eliminated. CAFOs should have cradle-to-grave responsibility for all of their wastes, or at least the land application requirements of the draft permit should apply to all land-applied CAFO wastes including manifested wastes. GPS locations and boundary maps of fields used by waste recipients must be provided to track where manure is being applied.

Response: Both federal and state rules allow CAFOs to transfer waste to others. The manifest rules and the CAFO General Permit allow the Department to prohibit transfers to parties that cause water quality problems due to their CAFO waste application practices. The Department has no current need for GPS locations of manure application sites. Location information, as currently recorded by CAFOs, is sufficient.

40. **Comment:** Manifesting recordkeeping should be streamlined through use of a spreadsheet system rather than the current intense, redundant paperwork. If manifesting paperwork was reduced to a spreadsheet/log format, then it could be kept in the CNMP.

Response: Manifesting requirements and the associated paperwork are consistent with Michigan's manifesting rules.

41. **Comment:** Manure manifesting requirements exceed federal law now and additional paperwork or regulations, such as groundwater permits, will not help to protect waters of the state.

Response: Manifesting requirements, including paperwork, have not been significantly revised from the previous CAFO General Permit. The implementation of groundwater permits for manifested CAFO waste is not currently under consideration by the Department.

Comments on the Water Quality-Impaired Waters Section, Part I.B.9.

42. **Comment:** Law does not require the inclusion of new Total Maximum Daily Load (TMDL) language in an NPDES permit. Permit language gives the belief that CAFOs located in TMDL areas bear some responsibility for the exceedance, even though CAFO permits prohibit discharges that exceed water quality standards. It is not appropriate to create an automatic duty to follow additional measures when a farm has had no discharge. If TMDL language must be included, it should match the language in the recently-issued Industrial Storm Water General Permit No. MIS510000.

Response: The USEPA has informed the Department that all permits must contain TMDL language. The language has been revised. It is not intended to assume CAFOs bear responsibility for the exceedance or to automatically impose additional requirements. Each situation will be considered on a case-by-case basis, and if any additional requirements are proposed it will be only if those requirements will result in a material improvement in water quality.

43. **Comment:** High-risk, vulnerable areas, such as those with TMDLs, should be off limits for new CAFOs or expansions, and existing CAFOs in such areas should be strictly monitored. Existing CAFOs in watersheds with an approved TMDL should be required to obtain an individual permit with strict controls on the TMDL-limited pollutant.

Response: The Department has no authority to specify where CAFOs may or may not locate. The Department conducts routine inspections at all CAFOs and targets certain areas for increased monitoring as time and funding allow. The intent of the revised language in the CAFO General Permit is to allow CAFOs to be located in TMDL watersheds, yet impose the necessary requirements to meet the TMDL. Therefore, an individual permit would not be needed.

44. **Comment:** The language referring to cost-effective control measures for CAFOs in TMDL watersheds should be removed. Why should the Department be limited in what it can require of a CAFO by some alternative analysis probably developed by the CAFO or their consultant? Who decides what is cost effective?

Response: The language has been revised. References to cost-effective control measures are not in the revised language.

Comments on the Treatment System Section, Part I.B.10.

45. **Comment:** The digester language should be deleted. It is not required by federal rules and outside materials are subject to other regulations. Most farms constructing a digester will be new farms that will require an individual permit.

Response: The digester language was included at the request of CAFOs that currently operate digesters. The Department supports the implementation of anaerobic digesters at CAFOs and recognizes that anaerobic digesters may provide environmental benefits. The language contains minimal requirements, and imposes no restrictions on digester operation except that the addition of more than 20 percent outside materials will require an individual permit. Individual permits for CAFOs that choose to install digesters would likely be very similar to the CAFO General Permit.

46. **Comment:** The Department should review all plans and specifications for anaerobic digesters. They should be designed to specific standards and operated by licensed operators.

Response: The Department is not aware of any design standards for anaerobic digesters and, therefore, would have no standards on which to base a review. The Department operator certification program does not have a testing module for digester operators.

47. **Comment:** All non-CAFO waste added to a digester must be identified in the COC.

Response: All non-CAFO waste must be listed in the application (or an application amendment if changes/additions are proposed after COC issuance) and if the total amount will be greater than 5 percent, the non-CAFO waste will be listed in the COC. The CAFO General Permit language has been clarified to make this requirement clearer.

48. **Comment:** Merely listing in the application the non-CAFO waste to be added to the digester does not guarantee compliance. Some sort of enforcement trigger is needed because what goes into a digester will end up on the land and likely in surface waters also.

Response: The Department periodically inspects CAFOs to assure compliance, and the permittee must keep records of what and how much is added to the digester. Additional permit requirements will not guarantee compliance.

49. **Comment:** The use of non-CAFO waste in an on-farm digester should require an additional waste disposal permit.

Response: The CAFO General Permit does not exempt CAFOs from complying with all applicable laws and rules. If the use of certain materials in a digester requires a permit, then the CAFO must obtain such a permit or be subject to enforcement action. The Department, Waste and Hazardous Materials Division, has issued a land disposal permit exemption for most safe and commonly-used materials.

Comments on the Definitions Section, Part II.A.

50. **Comment:** The term “large CAFO” should be used instead of just “CAFO.” The definitions section still has a definition for large CAFO. This should be clarified.

Response: The CAFO General Permit is available to CAFOs of any size, not just those that qualify as “Large CAFOs.” A definition for “CAFO” has been added to the permit and the definition of “Large CAFO” has been modified to better clarify that “Large CAFOs” are required to obtain NPDES permit coverage.

51. **Comment:** The definition for Pasture Land indicates that “Travel Lanes” are not part of the production area. In other areas of the permit, “cattle walkways” are described as part of the production area and this should be the same for “travel lanes.”

Response: The CAFO General Permit language has been modified to clarify that animal walkways not within pasture areas are part of the production area.

Comments on the Boilerplate Sections, Part II.B.,C.,D., & E.

Note Regarding Boilerplate Language: Boilerplate language has received considerable discussion and undergone some revisions over many years. The Department elected to develop and include standard boilerplate language for all or most permits. As a result, some boilerplate provisions set forth in this section of the CAFO General Permit may not apply to CAFOs.

52. **Comment:** The Spill Notification paragraph should be revised to require reporting of all discharges to surface or groundwater instead of leaving it up to the permittee to determine what is in “excess.”

Response: The term “excess” refers to specific thresholds specified in the Part 5 rules for oil, salt, and a large list of specific chemicals. The list does not include things like manure. Other conditions in the CAFO General Permit require the reporting of discharges of manure and other CAFO waste.

53. **Comment:** The “Upset Noncompliance Notification” paragraph is confusing. It should be separated into two different paragraphs, noncompliance notifications and upset defense. This language is probably not needed and the intended effect is probably accomplished through requirements elsewhere in the permit. It is not clear what constitutes an upset at a CAFO.

Response: The paragraph only applies to noncompliance due to an upset and, therefore, the two cannot be separated. Reporting of discharges and other permit noncompliance is required elsewhere in the CAFO General Permit. This requirement is not likely to affect CAFOs.

54. **Comment:** The Bypass Prohibition and Notification paragraph should be revised to include suggestion of auxiliary treatment types to be considered. These could include trucking wastes to another farm with adequate storage room or to a municipal wastewater treatment plant. It should also be revised to prohibit Bypass Not Exceeding Limitations.

Response: This language refers to treatment facilities with direct discharges to surface waters, such as a municipal wastewater treatment plant. It is up to permittees to determine the use of auxiliary treatment. Bypass not exceeding limitations can only be allowed in limited circumstances specified in the CAFO General Permit language. This requirement is not likely to affect CAFOs.

55. **Comment:** The Transfer of Ownership or Control paragraph should be revised to require that the permittee provides the new owner with a copy of the permit.

Response: The paragraph requires that the permittee notify the Department ten days prior to the transfer. The Department will then notify the new owner of the existence of permit coverage as part of the name change modification process.

56. **Comment:** The Power Failure paragraph should be revised to require periodic testing of standby power to insure that it is operational.

Response: Part of providing an alternate power source to maintain permit compliance would be to ensure that the equipment remains in good operating condition, including necessary maintenance such as periodic testing. Power failures are not likely to affect a CAFO’s ability to maintain permit compliance.

57. **Comment:** All of Sections II.B., C., D., and E. should be identical to other Michigan general permits.

Response: Boilerplate language has evolved over time and may vary from other general permits. The most current boilerplate language is included in the CAFO General Permit.

Comments on CAFO Location

58. **Comment:** CAFOs located in a TMDL watershed and covered under a COC should not be allowed to expand to the point of needing an Antidegradation Demonstration (because they are not allowed to increase loadings in a TMDL watershed).

Response: Location of a CAFO within a TMDL watershed alone would not necessarily prohibit an existing CAFO from being allowed to increase the load of a particular pollutant. The requirements governing the Antidegradation Demonstration process and associated decisions are complicated but can be found in Rule 323.1098. A CAFO that proposed to increase the load of a pollutant beyond its TMDL loading capacity would never be permitted.

59. **Comment:** New CAFOs should not be allowed to locate in USEPA-designated sole-source aquifers, or CAFOs located in sole-source aquifers should be required to obtain individual permits with tight limits on any discharges.

Response: The Department has no authority to specify where CAFOs may or may not locate, but the Department can deny their permit application. The CAFO General Permit only allows discharges under certain very limited circumstances and such discharges may not cause or contribute to a violation of water quality standards. An individual permit would likely be very similar to the CAFO General Permit.

60. **Comment:** The Department that issues NPDES permits for CAFOs should also administer the siting process.

Response: The assignment of various duties is specified by law. The Department has the delegated authority in Michigan for the issuance of NPDES permits. The MDA is assigned the responsibility for the siting process.

61. **Comment:** Implement an approval system for CAFO locations where they will do the least damage.

Response: The Department has no authority to specify where CAFOs may locate or land apply wastes, but the Department can deny their permit application. The MDA administers the siting process for CAFOs.

Comments from the USEPA

62. **Comment:** Parts I.A.1. and I.A.4.a.1). Given that new source swine, poultry, and veal calf operations could be covered by the permit, these provisions do not establish "no discharge" effluent limitations for such operations consistent with 40 CFR 412.46(a). The permit must be revised to incorporate the requirements in 412.46(a).

Response: The permit has been revised to include no discharge limitations for new swine, poultry, and veal. In addition, due to the complexities of storage structure volume design at facilities with contaminated production areas exposed to precipitation, this permit will not be available to new swine, poultry, or veal facilities with such production areas.

63. **Comment:** Part I.A.1.a.2). This provision includes language from the USEPA's earlier CAFO regulation, and is not consistent with the language in 40 CFR 412.31(a)(1). The permit must be revised to incorporate the requirements in 412.31(a)(1).

Response: Revisions made as requested.

64. **Comment:** 40 CFR 122.23(h) specifies procedures that must be followed for CAFOs seeking coverage under a general permit. The permit does not include provisions specifying what CAFOs within the scope of the permit must do to notify the Department of their intent to be covered by the permit, the procedures the State will follow to review and notify the public regarding a CAFO's notice of intent to be covered, or how the Department will incorporate the terms of the CNMP as enforceable terms and conditions of the permit. The permit must be revised to include such provisions.

Response: The procedures that must be followed by entities that desire permit coverage and the Department's procedures for processing and public noticing such requests are specified in Michigan's rules and are not reiterated in permits. 40 CFR 122.23(h) refers to the terms of a nutrient management plan (NMP), not a CNMP. The CAFO General Permit itself contains the terms of a NMP and, therefore, the NMP terms are incorporated as enforceable parts of the permit. The CNMP envisioned by the CAFO General Permit are the records and descriptions of compliance with the NMP.

65. **Comment:** Part I.A.4.b.7) and Part I.A.5.e., CNMP modifications. Under Part I.A.4.b.7), permittees are required to notify the Department of any new fields it intends to use for land application activities. Other revisions to CNMPs are addressed in Part I.A.5.e. Neither of these provisions, however, address the review and public notification requirements for other substantial changes to terms of the CNMPs specified in 40 CFR 122.42(e)(6)(ii)(A), or the Department's review and public availability requirements for nonsubstantial revisions. Further, Part I.A.5.e. states that revisions to the CNMP, especially due to a significant change, may result in a permit modification, after opportunity for public comment. Please note, however, that under 40 CFR 122.42(e)(6), any time a permittee makes a change to its CNMP that affects the terms and conditions of the permit, the permit must be modified. The permit must be revised make these revisions.

Response: The permit states that the notice to the Department is a permit modification request and further states that the permittee may not use new fields until notified that processing of the permit modification is complete. That processing includes public noticing of new fields. 40 CFR refers to an NMP, not a CNMP. Since the NMP is actually contained in the CAFO General Permit itself, revisions to the NMP would require an individual permit.

66. **Comment:** Part I.A.4.b.7)c)C). References to "large" CAFO waste should be deleted in lines 1 and 3, consistent with the scope of the draft permit.

Response: Revisions made as requested.

67. **Comment:** Part I.A.5.c.2), CNMP. Currently, this provision focuses on requiring information for waste the CAFO has applied, and does not include requirements for the permittee to include all of the information required by 40 CFR 122.42(e)(5)(i) or (ii). This information includes, but is not limited to, the crops to be raised, realistic yield goals, and the amount of manure nutrients to be applied, or alternatively -the methodology to be used for calculating the land application rate. The permit must be revised to require facilities seeking coverage under the permit to provide such information in their CNMPs, and that such information will become terms of the permit. Part I.A.5.d.7) (under annual review and report) will also need to be revised to reflect any changes made to the permit to address 122.42(e)(5).

Response: 40 CFR refers to an NMP, not a CNMP. Application rates are specified in the CAFO General Permit itself. The CNMP, as required by the permit, is a document to show compliance with the NMP and, as such, includes records information, inspections, operation and maintenance plans, and past data. The annual report contains the future land application plans for the permittee plus updated CNMP data for the past year. The most recent annual report will be public noticed with the permit application.

68. **Comment:** Part I.B.9., Water Quality Impaired Waters. This provision includes language describing the actions the Department will take if it determines the goals of a TMDL are not being met due to the activities of a permittee. As written, the process described may result in informal control measures that would not be incorporated as enforceable provisions of the NPDES permit. To the extent such additional measures are necessary to comply with Michigan's water quality standards (see Part I.A.1.a), such measures should be incorporated into the permit through the process for permit modification, including review by the Department and an opportunity for public comment. During the January 29, 2010, call, the Department agreed to revise the permit to ensure that additional measures determined to be necessary to comply with Michigan's Water Quality Standards will be incorporated either through issuance of a revised COC, or through issuance of an individual permit for affected permittees.

Response: The Water Quality-Impaired Waters paragraph has been substantially revised from the public-noticed version. For nitrogen or phosphorus, the Department expects that compliance with the permit will allow the permittee to meet the pollutant loading capacity(ies) set forth in an approved TMDL. For *Escherichia coli*, Biota, and Dissolved Oxygen, the permit has been revised to state that any additional pollutant control measures shall be an enforceable part of the permit

69. **Comment:** Part I.A.4.a.2)a), Depth gauge for new swine, poultry, and veal calf operations. The draft permit does not reflect the revised depth marker requirements in 40 CFR 412.37(a)(2) with respect to new sources subject to 412.46(a)(l). The permit must be revised to incorporate the requirements in 412.37(a)(2)

Response: Revisions made as requested.

70. **Comment:** Part I.A.4.b.7)c). Language under the crop table refers to alternate data submitted with a "permit application." The permit should be revised as appropriate to reference a "notice of intent," if that is the method the Department intends to use for CAFOs seeking coverage under the general permit.

Response: The Department does not use "Notices of Intent" for CAFOs seeking coverage under the CAFO General Permit. The Department uses permit applications for all CAFOs, whether seeking coverage under a general permit or individual permit. CAFOs do not have permit coverage until the Department public notices the application and draft COC, and subsequently issues the COC.

Miscellaneous Changes Made Due to Internal or Verbal Comments

On Page 6, paragraph b), Structural Design: the last phrase "or describe repairs/upgrades needed and when they will be or were completed" has been deleted.

On Pages 6 and 7, throughout the Storage Structure Structural Design Section: References to "NRCS standards, set forth in Conservation Practice Standard No. 313, Waste Storage Facility, dated November 2005 (or June 2003" is shortened to just "NRCS 313 (2003 or 2005)". A definition for "NRCS 313 (date)" has been added to the definitions.

Also on Pages 6 and 7, the contents of submittals has been clarified. For example, added to paragraph C on Page 7 is the following: "Submittals shall be as follows: i) For structures that meet NRCS 313 2003, submit to the Department documentation signed by an engineer verifying that each structure is constructed in accordance with NRCS 313 2003. Complete as-built plans, specifications, drawings, etc. shall be kept at the farm with the CNMP and do not need to be submitted.

ii) For demonstrations of environmental performance equivalent to NRCS 313 2003 submit the demonstration as accomplished through an evaluation by a professional engineer to the Department, on a form provided by the Department.”

On Page 9, in the Field-by-Field Assessment Section under Land Application in the fourth sentence: the word “significant” prior to the word “erosion” has been deleted so it now reads: “The assessment shall also identify areas which, due to topography, activities, or other factors, have a potential for erosion.”

On Page 12, in the Land Application Log Section, items C and D were revised to clarify that the recordkeeping only applied to fields receiving CAFO waste. They now read:

“C) Methodology and calculations showing the total nitrogen and phosphorus to be applied to each field receiving CAFO waste, identifying all sources of nutrients including sources other than CAFO waste

D) The total amount of nitrogen and phosphorus actually applied to each field receiving CAFO waste irrespective of source, including documentation of calculations for the total amount applied”

On Page 15, in the CNMP Contents Section in line G) under Land Application: The words “and methods” have been added after the word “prohibitions” so it now reads: “G) Appropriate prohibitions and methods for land application”.

At the bottom of page 15, records and practices of non-production area storm water management has been added to the CNMP contents section.

See the revised permit for the exact language.

Prepared on March 30, 2010, by Mike Bitondo, Permits Section, Water Bureau, Department of Natural Resources and Environment