DEQ

WATER BUREAU
POLICY AND PROCEDURES

NUMBER:	**WB-017**
SUBJECT:	**DESIGNATIONS FOR SMALL OR MEDIUM CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO)**
EFFECTIVE DATE:	**OCTOBER 31, 2008**
REVISION DATE:	(5-YEAR REVIEW FREQUENCY)

ISSUE:

The purpose of this document is to provide guidance to the Michigan Department of Environmental Quality (MDEQ), Water Bureau (WB), staff regarding certain jurisdictional issues relating to the Part 21 Rules, Wastewater Discharge Permits, promulgated under Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

This guidance is intended to clarify certain provisions of Part 31 and provide information to encourage consistent administration of these provisions by WB staff. It is not intended to modify the provisions of Part 31, and should there be any apparent inconsistency between this guidance and statutory and administrative rule requirements, the language in the statute and rules should guide staff decisions.

This procedure is intended to provide a framework for making consistent designations by the MDEQ pursuant to the Part 21 Rules that a Small or Medium CAFO is required to obtain a discharge permit.

AUTHORITY:

Part 21 Rules, Wastewater Discharge Permits, promulgated under Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

POLICY AND PROCEDURE:

For designating Small Animal Feeding Operations (AFO) as Small CAFOs, there is only one process for this – using the Significant Contributor designation process described in Rule 2196(3). For designating Medium CAFOs, there are two ways to designate them – either using the Significant Contributor designation process in Rule 2196(3) or determining that a discharge of pollutants from the production area to the surface waters has occurred pursuant to Rule 2103(m). Please note that for Medium AFOs, a determination can be made by district staff that pollutants are discharged from the production area into the waters of the state. This is sufficient in itself, pursuant to Rule 2103(m), to designate a Medium CAFO and require a National Pollutant Discharge Elimination (NPDES) Permit. The Part 21 Rules that deal with how Small and Medium CAFOs are defined and designated are attached.

The process for designations for both Small and Medium CAFOs is presented below. In general, each situation must be carefully evaluated, considering the duration, magnitude, and frequency of any discharges. If the situation can be readily corrected and will likely not be repeated, it may be prudent to do so without proceeding to CAFO designation and requiring a permit. Please note: This process may be undertaken along with concurrent enforcement actions.

This policy provides guidance to staff regarding the implementation and interpretation of laws administered by the DEQ. It is merely explanatory, does not affect the rights of or procedures and practices available to the public, and it does not have the force and effect of law.

1. WB district or Surface Water Assessment Section (SWAS) staff believes that, pursuant to Rule 2196(3), there is a significant contribution or reasonable potential for significant contribution of pollutants from a Small or Medium AFO discharge and that the discharge would not be required automatically to apply for NPDES permit coverage pursuant to Rule 2103(m). For a Small AFO, this discharge must originate from the production area. In general, this proposed designation would be where violations of Water Quality Standards are found, or reasonably expected, given the quality of the discharge. For these types of discharges, impacts may be expected to be seen in physical characteristics of the receiving water, aquatic biota, *E. coli*, dissolved oxygen, and nuisance algal growths. Samples for *E. coli*, dissolved oxygen, and total phosphorus may be useful in this consideration. A summary report of findings should be prepared using the attached "Significant Contributor Designation Summary Report on Findings" form. Information of any Total Maximum Daily Loads (TMDL) or nonattaining reaches related to these issues is important and should also be noted on the attached form.
2. Once this information is obtained, the originator of the process (generally district or SWAS staff) will convene a meeting of the appropriate WB staff, which will generally include the district, the Permits Section (PS), and the SWAS. The purpose of this meeting will be to review the information to assess the appropriateness of proceeding with the designation recommendation.
3. If a designation is recommended as a result of the meeting, the district staff must conduct an inspection of the CAFO operation before proceeding with the designation process. This inspection may have been conducted already.
4. The information (inspection results, sampling results, and any additional documentation) is sent to the PS for final review and preparation of the recommendation package. The PS will send a recommendation to the WB chief and copy the district office and the SWAS.
5. The WB chief will notify the district office, the PS, and the SWAS of the final determination.
6. If the WB chief designates that a permit is needed, the PS will notify the regulated entity in writing of the need to apply for a permit. In addition, notice will be provided to the Michigan Department of Agriculture.

REFERENCE TO BUREAU PROGRAMS:

Bureau programs affected include:

NPDES (non-storm water) Program
Surface Water Ambient Monitoring Program
Nonpoint Source Control Program
Surface Water Restoration and Protection Program

METHOD OF DISTRIBUTION: INTRANET

This procedure will remain in effect until further notice or revision.

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APPROVED: William Creal DATE: 10-29-2008
William Creal, Chief
Water Bureau

LAST REVIEWED BY: _____ DATE: _____
Name
Title

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Attachment 1: Part 21 Rules that deal with designating Small and Medium CAFOs.

Rule 2103(m) states:
(m) "Medium CAFO" is defined as the following:
(i) Is an AFO that stables or confines the numbers of animals specified in any of the categories listed in Subdivision (ii) of this Subrule, and any of the following are met:
(A) Has been designated by the department as a CAFO under R 323.2196(3).
(B) Pollutants are discharged from the production area into waters of the state through a manmade ditch, pipe, tile, swale, flushing system, or other similar manmade conveyance.
(C) Pollutants are discharged directly into waters of the state from the production area which originate outside of and pass over, across, or through the facility or that otherwise come into direct contact with the animals confined in the operation.

Rule 2104(o) states:
(o) "Small CAFO" means an AFO that is designated a CAFO by the department under R 323.2196(3) and is not a medium CAFO.

Rule 2196(3) states:
(3) In designating an AFO as a CAFO, the following apply:
(a) The department may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the state. In making this designation, the department shall consider all of the following factors:
(i) The size of the AFO and the amount of production area waste and CAFO process wastewater reaching waters of the state.
(ii) The location of the AFO relative to waters of the state.
(iii) The means of conveyance of production area waste and CAFO process wastewater into waters of the state.
(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of production area waste and CAFO process wastewater into waters of the state.
(v) Other relevant factors.
(b) An AFO shall not be designated under this Subrule unless the department has conducted an inspection of the operation.
(c) An AFO with numbers of animals below those established in R 323.2103(m) shall not be designated as a CAFO unless either of the following occurs:
(i) Pollutants are discharged from the production area into waters of the state through a manmade ditch, pipe, tile, swale, flushing system, or other similar manmade conveyance.
(ii) Pollutants are discharged from the production area directly into waters of the state which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

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Significant Contributor Designation
Summary Report on Findings

Date:

AFO Name:
Owner/Operator:
Address:
City/Town:
Zip Code:
County: **District**:

Report Prepared by: (FOD/SWAS)

Date inspection conducted: (attach report)

Date/conditions/location of water quality sampling: (attach report with data and findings)

Number and type of animals housed:

Describe overall condition of AFO facility (waste storage structures, housekeeping practices, use of BMPs, livestock access to waters of the state):

Location of adjacent waters of the state to the AFO (general description and GPS info):

Is the potentially affected surface water designated as nonattaining or as a TMDL?

Describe slope, vegetation, rainfall and other factors that affect the likelihood or frequency of discharges from the AFO to the waters of the state:

Describe the approximate amount of production waste and process wastewater reaching waters of the state:

Describe the means of conveyance of the production waste and process wastewater reaching waters of the state:

Describe any other factors pertinent to the determination (cattle access to surface waters, condition of waste storage structures, etc.):