

**MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

**GENERAL PERMIT
FOR
CONCENTRATED ANIMAL FEEDING OPERATIONS**

Permit No. MTG010000

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

In compliance with the Federal Water Pollution Control Act (the “Clean Water Act”), 33 U.S.C. § 1251 *et seq.* and the Montana Water Quality Act, Title 75, Chapter 5, Montana Code Annotated (MCA), owners and operators of concentrated animal feeding operations (CAFOs) are authorized to discharge and must operate their facility in accordance with the limitations, monitoring requirements, and other provisions set forth herein. A written letter of authorization from the Department is required before an owner or operator of a CAFO is authorized to discharge under this general permit.

A copy of this General Permit and letter of authorization must be kept on site at all times.

This permit shall become effective: **[date effective]**

This permit and the authorization to discharge shall expire at midnight, **[expiration date]**.

FOR THE MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

Jon Kenning, Chief
Water Protection Bureau
Water Quality Division

Issuance Date: [date issued]

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1 PERMIT AREA AND COVERAGE

1.1 Permit Area

This General Permit applies to all areas within the state of Montana, except on lands within the boundary of federally recognized Indian reservations.

1.2 Sources Eligible for Coverage

Owners or operators of animal feeding operations that meet the definition of a concentrated animal feeding operation (CAFO) as defined by Montana Code Annotated are eligible for coverage under this general permit. The Montana Discharge Elimination System (MPDES) requirements for CAFOs apply to all animals in confinement at the operation and to all manure, litter and process wastewater generated by those animals or by the production of those animals, regardless of the type of animal.

1.3 Limitations on Coverage

The following CAFOs are not eligible for coverage under this general permit and must apply for an individual permit:

- (a) CAFOs that cannot comply with any applicable effluent standards, effluent limitations, standards of performance for new sources of pollutants, toxic effluent standards and prohibitions, and pretreatment standards;
- (b) CAFOs that do not meet the adequate storage requirements for manure, litter and process wastewater;
- (c) CAFOs that do not meet the minimum ground water protection;
- (d) CAFOs that cannot comply with any applicable water quality standards;
- (e) CAFOs that have discharges to which the regional administrator of the Environmental Protection Agency (EPA) has objected in writing; and
- (f) CAFOs that the Department has notified to apply for an individual permit.

1.4 Application for Coverage

Owners or operators of CAFOs seeking to be covered by this general permit must:

- (a) submit a complete Notice of Intent (NOI-CAFO);
- (b) submit a complete Nutrient Management Plan (NMP) that meets the requirements of this permit; and
- (c) submit the appropriate application fee.

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 application should be

submitted at least 90 days before the expiration date of this permit.

Sage Grouse Consultation Requirements for NOI-CAFO - If the operation is within designated sage grouse habitat, any modification due to a change in disturbed acreage requires verification from the Montana Sage Grouse Habitat Conservation Program that may require a consultation letter and/or updates to a consultation letter. If the operation is outside of sage grouse habitat, no consultation is required.

1.5 Requiring an Individual Permit

An operation that meets the definition of a CAFO, and other applicable requirements, must be authorized by the Department under a general permit, unless, upon review of the NOI-CAFO or the operation's NMP, DEQ discovers site-specific information that indicates that coverage will not sufficiently protect water quality.

The Department may require any facility to apply for and obtain an individual permit if:

- (a) the facility is unable to comply with the terms and condition of this permit; or
- (b) the Department determines that discharge causes or contributes to a violation of water quality standards.

1.6 Public Participation

If the Department makes a preliminary determination that the NOI-CAFO and NMP are complete, the NOI-CAFO and NMP will be made available for a thirty (30) day public review and comment period on the Department's website. The Department will respond to any significant comments received during the comment period and, if necessary, require the CAFO owner or operator to revise the NMP. The Department will notify the permittee of the final decision concerning the CAFO permit application.

The permittee shall notify the Department of any proposed changes to the NMP on file with the Department. The Department will review the proposed changes to determine if revision to the terms of the NMP is necessary.

- (a) No change to terms of NMP – If revision to the terms of the NMP is not necessary, the Department will notify the permittee and upon such notification the CAFO may implement the revised NMP; or
- (b) Changes to terms of NMP – If revision to the terms of the NMP is necessary, the Department will determine whether such changes are substantial changes.
 - (1) No substantial change – If changes to the terms of the NMP are not substantial, the Department will notify the permittee and the public of any changes incorporated into the terms of the NMP on the Department's website.

(2) Substantial change – If changes to the terms of the NMP are substantial, the Department will make the proposed changes available for public review and comment for a thirty (30) day public review and comment period on the Department’s website. The Department will respond to any significant comments received during the comment period and, if necessary, require the CAFO owner or operator to revise the NMP. The Department will notify the permittee of the final decision concerning the proposed changes to the NMP.

1.7 Change in Ownership

The owner or operator of an operation under this general permit may request a change in ownership of the facility. Coverage under the permit will automatically transfer if:

- (a) The current owner or operator notifies the Department at least 30 days prior to the proposed transfer date using Permit Transfer Notification (PTN) form.
- (b) The notice includes a written agreement between the existing and new owner or operator containing a specific transfer date for permit responsibility, coverage, and liability.

This process constitutes a written notice that the new owner or operator assumes responsibility and liability for all the terms and conditions in the permit including the permit fees. The PTN form may not be used to transfer permit coverage to a new or different site nor location to modify the terms and conditions of the permit.

If the new CAFO owner or operator modifies any part of the NMP, the NMP must be submitted to the Department in accordance with Part 1.6 of this permit.

1.8 Terminating Permit Coverage

Owners or operators may also seek to be excluded from coverage under this permit by either submitting to the Department a written Notice of Termination or by applying for an individual MPDES permit in accordance with Part 1.5 of this permit. The written notice must include a reason for the request and be signed and certified by the owner or operator of the CAFO.

Coverage under this permit may be terminated if one of the following three conditions is met:

- (a) The facility has ceased all operations and all wastewater or manure storage structures have been properly closed following the procedures outlined in the Natural Resource Conservation Service (NRCS) Conservation Practice Standard No. 360 and all remaining stockpiles of manure, litter, or process wastewater not contained in a wastewater or manure storage structure are properly disposed.
- (b) The facility is no longer a CAFO that discharges manure, litter, or process wastewater to state waters.
- (c) The entire discharge is permanently terminated by elimination of the flow or by

connection to a publicly owned treatment works (POTW).

2 EFFLUENT LIMITATIONS AND OTHER CONDITIONS

The effluent limitations and standards given in Part 2.1 and 2.3 apply to all facilities covered by this permit. The effluent limitations and standards given in Part 2.2 apply to all facilities unless otherwise noted.

2.1 Effluent Limitations and Standards – Production Area

There shall be no discharge of manure, litter, or process wastewater pollutants from the production area into state waters except when precipitation causes an overflow of manure, litter, or process wastewater. In the event, the pollutants in the overflow may be discharged to State Waters provided that:

- (a) the production area is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event;
- (b) such discharge was the result of the 25-year, 24-hour rainfall event;
- (c) no feasible alternative to discharging existed;
- (d) only waste in excess of the storage capacity of the livestock waste control facility was discharged;
- (e) the discharge was conducted under the conditions to minimize any adverse effects to State Waters;
- (f) the Department received notification of the discharge; and
- (g) the production area is operated in accordance with the additional measures and recordkeeping requirements specified in Part 2.2 of this permit.

2.2 Production Area and Livestock Waste Control Facility

The following requirements apply to the production area and livestock waste control facility.

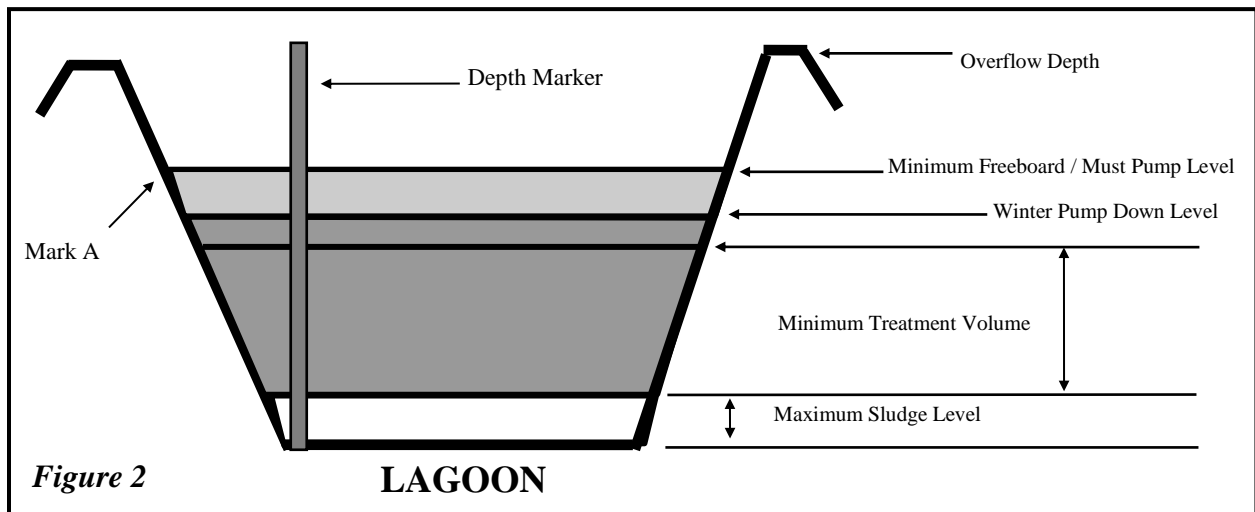
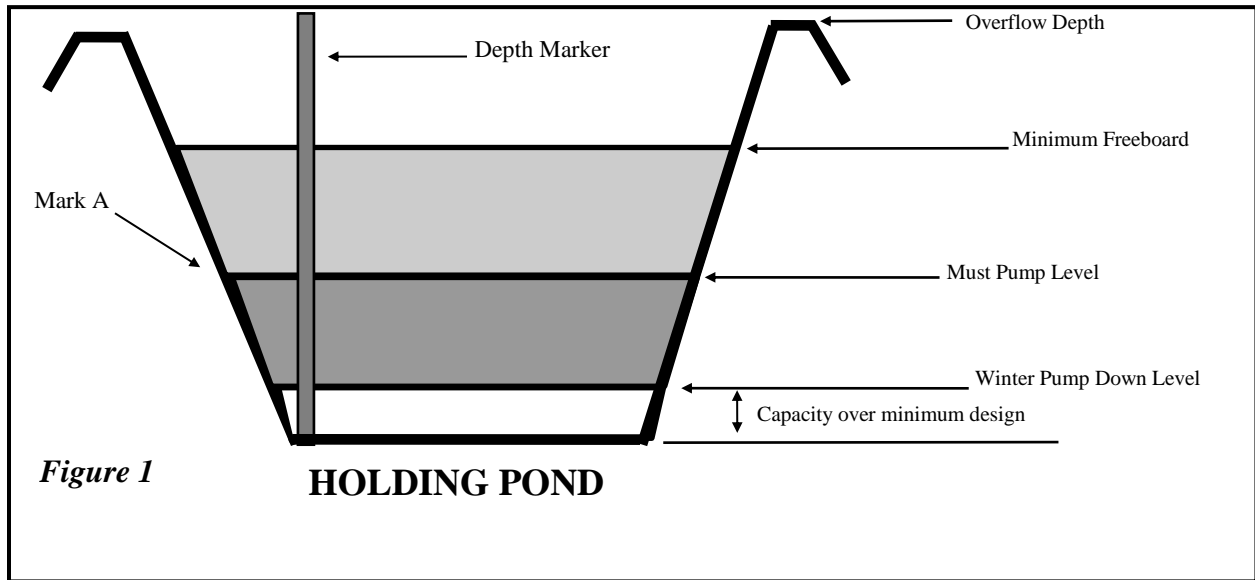
2.2.1 Livestock Waste Control Facility

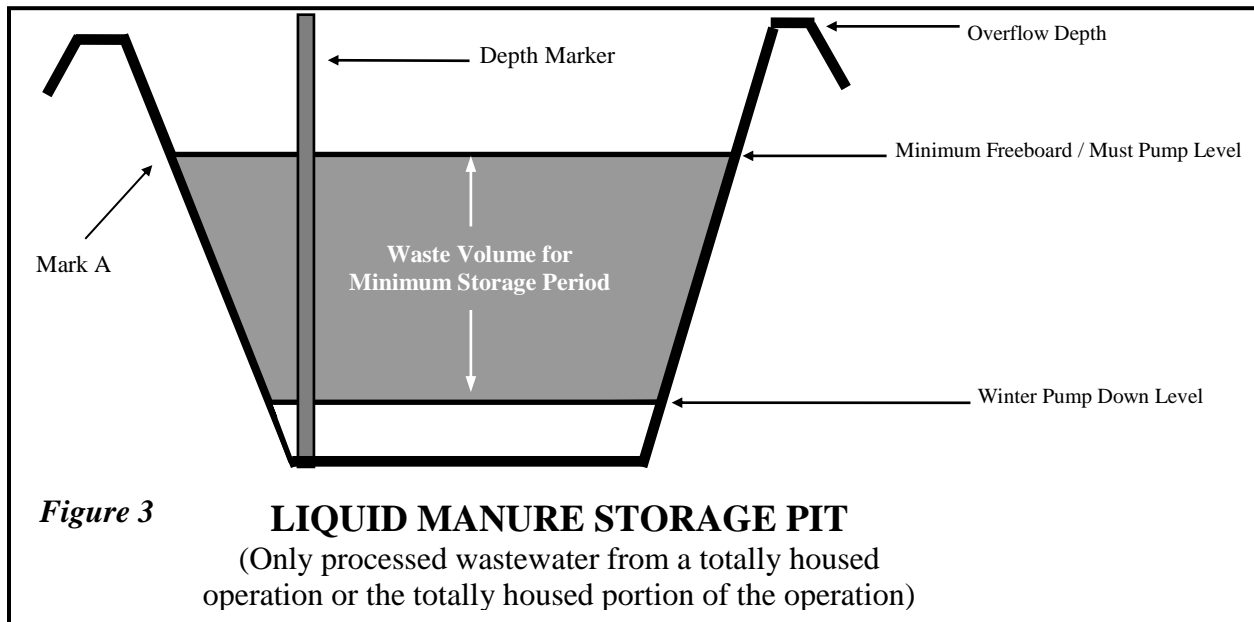
The livestock waste control facility must be designed, operated and maintained as follows:

- (a) the minimum critical storage period must be at least 180 days and must include all liquid and solid manure, litter, process wastewater, and any other wastes from the production area;
- (b) to contain the normal storm water runoff from the production area for the 180-day critical storage period;
- (c) to contain a volume of runoff equivalent to the 25-year, 24-hour rainfall event;

- (c) to contain the direct precipitation from the 25-year, 24-hour rainfall event;
- (e) to contain residual solids after liquid has been removed; and,
- (f) a minimum of one foot of freeboard.

All livestock waste control facilities must have a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation from a 25-year, 24-hour rainfall event (Must Pump Level, Mark A in Figures 1, 2, and 3).





Facility Operation

Dewatering of facilities 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. The facilities shall be dewatered prior to the winter months to provide capacity indicated by the 180-day, or “Winter Pump Down” level.

Ground Water Protection

Waste containment structures must be sealed such that seepage loss through the seal is as low as practicably possible. Seals consisting of solids, bentonite, or synthetic liners may be considered provided the permeability, durability, and integrity of the proposed material is satisfactorily demonstrated for the anticipated conditions. Results of a testing program that substantiate the adequacy of the proposed seal must be incorporated into and accompany the design report. Testing must take place at the maximum operation depth. Standard ASTM procedures or acceptable similar methods must be used for all tests. To achieve an adequate seal in systems using soil, bentonite, or other seal materials, the coefficient of permeability (k) in centimeters per second specified for the seal may not exceed the value derived from the following expression:

$$k=(3.0 \times 10^{-9})L,$$

where L equals the thickness of the seal in centimeters.

Finished elevations for soil and bentonite liners must not vary more than 3 inches from the average

elevation of the bottom and should be as level as possible. Sloped pond bottoms are allowed for synthetic liners; however, they must be uniformly sloped.

Waste Containment structure must meet also meet the following criteria;

- (a) A minimum separation of 10 feet between the pond bottom and any bedrock formation must be maintained.
- (b) A minimum separation of 4 feet between the pond bottom and any ground water; and
- (c) New wastewater containment structures or the manure and wastewater disposal sites must follow any applicable setbacks from water well(s).

If a facility cannot meet the above criteria, a facility may submit to the Department site-specific information demonstrating that the location of any wastewater containment structure will not be a source of pollutants to ground water.

Facility Closure

Livestock waste control facilities shall be maintained at all times until closure. The livestock waste control facilities that are not in use for a period of twelve consecutive months must be properly closed unless the permittee either (1) maintains the structure as though it were actively in use, to prevent compromise of structural integrity, or (2) 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. The permittee shall conduct routine inspections, maintenance, and recordkeeping as though the structure were in use. At least 30 days prior to the resuming use of the structure, the permittee shall notify the Department and provide the Department the opportunity for inspection.

The following criteria apply to all closures of livestock waste control facilities:

- (a) the closure shall comply with all federal, state, and local laws, rules, and regulations;
- (b) all structures used to convey waste to the waste impoundments shall be removed and replaced with compacted earth material or other materials otherwise rendered unable to convey waste; and,
- (c) liquid and slurry wastes shall be agitated and pumped to the extent conventional pumping will allow. Clean water shall be added as necessary to facilitate the agitation and pumping. The wastewater shall be utilized in accordance with the facility's site-specific NMP. The manure solids remaining on the bottom and sides of the waste treatment lagoons or waste storage ponds may remain in place if they will not pose a threat to the environment. If leaving the manure solids in place would pose a threat, the manure solids shall be removed to the fullest extent practical and either land-applied at agronomic rates or transferred to other persons in accordance with any applicable transfer

requirements.

Impoundments with embankments may be breached such that they will no longer impound water. Excavated impoundments may be backfilled so that these areas may be reclaimed for other uses. Impoundments that have water impounded against the embankment are considered embankment structures if the depth of water is three feet or more above natural ground. The following additional requirements apply to waste impoundment embankments:

- (d) Embankment Impoundments. Waste shall be removed from the site before the embankment is breached. The slopes and bottom of the breach shall be stable for the soil material involved, however the side slopes shall be no steeper than three horizontal to one vertical (3:1).
- (e) Excavated Impoundments. The backfill height shall exceed the design finished grade by 5 percent to allow for settlement. The finished surface shall be constructed of the most clayey material available and mounded to shed rainfall runoff. Incorporate available topsoil where feasible to aid establishment of vegetation.
- (f) Conversion to Fresh Water Storage. The converted impoundment shall meet all applicable state laws and regulations governing the impoundment of fresh water. When manure solids are not removed from a waste impoundment that is converted to fresh water storage, the impoundment shall not be used for fish production. Precautions (fencing and warning signs) shall be used to ensure that the pond is not used for incompatible purposes such as swimming and livestock watering until water quality is adequate for these purposes.

All disturbed areas not returned to crop production shall be vegetated or otherwise stabilized to control erosion. Measures shall be taken during construction/deconstruction to minimize site erosion and pollution of downstream water resources. This may include, but is not limited to the installation of silt fences, hay bale barriers, temporary vegetation, and mulching material.

Unless otherwise authorized by the Department, the completion of closure for livestock waste control facilities shall occur as promptly as practicable 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 facilities are being maintained for possible future use in accordance with the requirements above.

2.2.2 Corrective Actions (Large CAFOs only)

Any deficiencies found as a result of inspections must be corrected as soon as possible.

2.2.3 Mortality Handling (Large CAFOs only)

Mortalities must not be disposed of in any liquid manure or process wastewater system, and must be handled in such a way as to prevent the discharge of pollutants to surface water.

2.2.4 Recordkeeping requirements

The permittee shall inspect, monitor and record the results of inspection and monitoring in accordance with Table A

Table A (Recordkeeping requirements)

Parameter	Units (e.g.)	Frequency
Permit and Nutrient Management Plan		
The CAFO must maintain onsite a copy of the current MPDES permit and cover letter granting coverage	N/A	Maintain at all times
The CAFO must maintain onsite a copy of a current, site-specific NMP that reflects existing operational characteristics. The operation must also maintain onsite all necessary records to document that the NMP is being properly implemented with respect to manure and wastewater generation, storage and handling, and land application.	N/A	Maintain at all times
Soil, Irrigation Water, and Manure/Wastewater Nutrient Analyses		
Analysis of manure, litter, and process wastewater to determine nitrogen and phosphorus content	ppm pounds/ton	At least annually after initial sampling
Analysis of soil in all fields where land application activities are conducted to determine nitrogen content	ppm pounds/ton	Annually after initial sampling
Analysis of soil in all fields where land application activities are conducted to determine phosphorus content	ppm pounds/ton	At least once every five (5) years after initial sampling
Analysis of water used for irrigation purposes on application fields to determine nitrogen content	ppm pounds/ton	At least once every five (5) years after initial sampling
Inspection Documentation (Larges CAFOs only)		
Visual inspection of all water lines	N/A	Daily
Precipitation events	Inches	Daily

Parameter	Units (e.g.)	Frequency
Depth of manure and process wastewater in impoundments	Feet	Weekly and after precipitation events
Storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the facilities	N/A	Weekly
Documentation of all corrective actions taken. An explanation of the factors preventing correction within thirty (30) days	N/A	As necessary
Operation and Maintenance (Large CAFOs only)		
Documentation of animal mortality handling practices	N/A	As necessary
Documentation of chemical handling practices	N/A	As necessary
The CAFO must maintain onsite a copy of a current 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	N/A	Maintain at all times
Documentation of overflows from all manure and wastewater facilities: <ul style="list-style-type: none"> Date and time of overflow Estimated volume of overflow 	Month/day/year Total gallons To be determined	Per event Per event Per event
Land Application		
For each application event where manure, litter, or process wastewater is applied, document the following for each field: <ul style="list-style-type: none"> Date of application Method of application Weather conditions at the time of application and for twenty-four (24) hours before and after application Total amount of nitrogen and phosphorus applied 	Month/Day/Year N/A N/A Pounds/acre	Daily Daily Daily Daily
Documentation of the crop and expected yield for each field	Bushel/acre	Seasonally
Documentation of the actual crop planted and actual yield for each field	Crop Bushel/acre	Seasonally
Documentation of test methods and sampling protocols used to sample and analyze manure, litter, and wasters and soil	N/A	Once in the permit term unless revised
Documentation of the basis for the application rates used for each field where manure, litter, or wastewater is applied	N/A	Once in the permit term unless revised
Documentation showing the total nitrogen and phosphorus to be applied to each field including nutrients from the application of manure, litter, and wastewater and other sources	Pounds/acre	Once in the permit term unless revised
Documentation of manure application equipment inspection	N/A	Seasonally
Manure Transfer		
<ul style="list-style-type: none"> Date of transfer Name and address of recipient Approximate amount of manure, litter, or process wastewater transferred Nutrient analysis results 	Month/Day/Year N/A Tons / gallons ppm	As necessary As necessary As necessary For each transfer

The permittee must maintain records onsite for a period of five years from the date they are created and must make these records available to the Department upon request.

2.2.5 Visual Inspections (Large CAFOs only)

There must be routine visual inspections of the CAFO production area. At a minimum, the following must be visually inspected:

- (a) weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water into the wastewater and manure storage and containment structure(s);
- (b) daily inspection of water lines, including drinking water or cooling water lines; and,
- (c) weekly inspections of the manure, litter, and process wastewater impoundments. The inspection must note the level in liquid impoundments as indicated by the depth marker in Part 2.2.1.

2.3 Effluent Limitations and Standards – Land Application Area

There shall be no discharge from the land application area during dry weather. In addition, each CAFO authorized by this permit that land applies manure, litter, or process wastewater must do so in accordance with the best management practices (BMPs) specified in 2.3.1.

2.3.1 Best management practices

The CAFO must develop and implement BMPs that incorporate the following;

- (a) The CAFO must develop and implement a NMP that incorporates items (b) through (e) of this section based on a field-specific assessment that evaluates the potential for nitrogen and phosphorus transport from the land application field(s) and that address the form, source, amount, timing, and method of application of nutrient on each field to achieve realistic production goals while minimizing nitrogen and phosphorus movement into surface water.
- (b) Application rates for manure, litter, and process wastewater applied to land under the ownership or operational control of the CAFO must minimize nitrogen and phosphorus transport from the field into surface water.
- (c) Manure must be analyzed a minimum of once annually for nitrogen and phosphorus content and the soil must be analyzed a minimum of once every five years for phosphorus content. The results of these analyses must be used in determining the application rates for manure, litter, or process wastewater.
- (d) The operator must periodically inspect equipment used for land application of manure, litter, or process wastewater.
- (e) Manure, litter, and process wastewater must not be applied closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sink holes, agricultural well heads, or any other conduits to surface waters unless the permittee demonstrates in the site-specific NMP that the following compliance alternatives are protective of water quality:
 - (i) the CAFO may substitute the 100-foot setback with a 35-foot wide vegetated

buffer where applications of manure, litter or process wastewater are prohibited;
or

(ii) the CAFO may demonstrate that a set-back 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.

3 MONITORING AND REPORTING REQUIREMENTS

3.1 Notification of Discharge

If for any reason there is a discharge of pollutants from the permitted facility, the permittee shall notify the Department orally within 24 hours from the time the permittee becomes aware of the discharge. Oral notification shall be reported to the Department's Water Protection Bureau. If the discharge occurs on a weekend or holiday, the permittee shall leave a message describing the circumstances of the discharge.

In addition to the oral notification, the permittee shall provide a written submission to the Department with within five (5) working days of the time the permittee initially becomes aware of the discharge. The written submission shall contain the following:

- (a) a description of the discharge and its cause, including a description of the flow path to state waters;
- (b) an estimate of the volume and duration of the discharge;
- (c) the period of discharge, including exact dates and times;
- (d) the steps taken or planned by the permittee to reduce, eliminate, and prevent recurrence of the discharge;
- (e) if the discharge was a result of precipitation, a record of the total precipitation at the official gage station identified within the permittee's authorization letter under this general permit, or at an onsite rain gauge, for the period of weather that resulted in the discharge; and
- (f) the permittee shall submit the information required in this section on a discharge monitoring report (DMR) form provided by the Department. The DMR form must be submitted to the Department by January 28 of each year for the previous calendar year. *If no discharge occurs during the entire monitoring period, it shall be stated on the DMR form.* The DMR form shall be signed and certified in accordance with Part 5.18 of this permit.

3.2 Annual Report

The permittee shall submit an annual report to the Department by no later than January 28th of each year. The annual report shall cover the previous calendar year. The annual report must be submitted using the CAFO Annual Report Form provided in Appendix B of this permit. All

information requested in the annual report must be included, as applicable. The annual report must include the following information:

- (a) the number and type of animals, whether in open confinement or housed under roof;
- (b) the estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- (c) the estimated amount of total manure, litter, and process wastewater transferred to other person(s) by the CAFO in the previous 12 months;
- (d) the total number of acres for land application covered by the NMP;
- (e) the 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;
- (e) a summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including the date, time, and approximate volume;
- (f) the actual crops planted and the actual yields for each field for the preceding 12 months;
- (g) the actual nitrogen and phosphorus content for manure, litter and process wastewater;
- (h) the data used in and results of calculations conducted in accordance with the linear or narrative rate of application;
- (i) the amount of manure, litter, and process wastewater applied to each field during the preceding 12 months;
- (j) the results of any soil testing for nitrogen and phosphorus conducted during the preceding 12 months; and,
- (k) the amount of any supplemental fertilizer applied during the preceding 12 months.

3.3 Ground Water Monitoring

The Department may require the permittee to monitor ground water near the facility if any component of the production area constitutes a potential source of pollution to state ground water. Monitoring may be required in areas having shallow ground water or soils materials in the unsaturated zone with low filtering capacity. Ground water sample, analysis and reporting is subject to the monitoring and reporting provision of this permit, including conformance with 40 CFR 136 procedures. Ground water monitoring may be required by the Department regardless of whether a discharge of pollutants occurs.

4 SPECIAL CONDITIONS

4.1 Nutrient Management Plan

The NMP shall specifically identify and describe the practices that will be implemented to assure compliance with the effluent limitations set forth in Part 2 of this permit and other conditions of

this permit. The NMP may be completed on the NMP form provided in Appendix C of this permit. When the Department authorizes coverage of the CAFO owner or operator under the general permit, the terms of the NMP are incorporated as conditions of this permit for the CAFO. The permittee must implement the terms of the NMP.

4.1.1 Terms of the Nutrient Management Plan

The CAFO's site-specific NMP must at a minimum include the best management practices necessary to meet the requirement of this Part and the applicable effluent limitations and standards in Part 2 of this permit. The NMP must, to the extent applicable:

- (a) ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure the 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 direct contact of confined animals with State waters;
- (e) ensure that chemicals and other contaminants handled onsite are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
- (f) identify appropriate site-specific conservation practices to be implemented, including the use of appropriate buffers or equivalent practices, to control the runoff of pollutants into state waters;
- (g) identify protocols for the appropriate testing of manure, litter, process wastewater, and soil of this permit;
- (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) must maintain specific records required in Table A of this permit.

4.1.2 Transfer of Manure or Process Wastewater to Other Persons

Prior to transferring manure, litter, or process wastewater to other persons, the CAFO must provide the recipient of the manure, litter, or process wastewater with the most current nutrient analysis. The analysis must specify the nitrogen and phosphorus content of the manure, litter, and process wastewater based on the current calendar year using the testing procedures given in this permit. CAFOs must retain for five years records of the date, recipient name, and address, and the approximate amount of manure, litter, or process wastewater transferred to another person.

4.1.3 Land Application Rates

The NMP must address the rates of application using one of the two approaches (linear or narrative) given in this Part.

Linear Approach

The linear approach expresses rates of application as pounds of nitrogen and phosphorus as determined in (a) through (g). The terms include the maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the NMP, in the chemical forms given in Appendix D of this permit, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms must include:

- (a) the outcome of the field-specific assessment for the potential for nitrogen and phosphorus transport from each field;
- (b) the crops to be planted in each field or any other uses of a field such as pasture or fallow fields;
- (c) the expected crop yield (goal) for each crop or use identified in (b) above;
- (d) the nitrogen and phosphorus recommendations based on a nutrient needs analysis for each crop based on the appropriate basis (nitrogen- or phosphorus-based application) using the procedure described in Appendix D;
- (e) the nitrogen and phosphorus recommendations must account for all sources of nutrients, including the nitrogen reduction credit due to legumes, mineralization of manure, litter and process wastewater, commercial fertilizer, irrigation water and other sources, and any adjustment for method of application; and
- (f) for any fields for which a multiyear phosphorus application is considered (nitrogen-based application), application rates based in the protocols given in Appendix D; and
- (g) the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

CAFOs that use this approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater analysis for nitrogen and phosphorus taken within 12 months of the date of land application.

Narrative Rate Approach

The narrative approach expresses the rates of application as a narrative rate of application resulting in the amount, in tons or gallons, of manure, litter, and process wastewater to be land

applied, according to the specifications in (a) through (e). The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the NMP, in chemical forms given in appendix D, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms must include:

- (a) the outcome of the field-specific assessment for the potential for nitrogen and phosphorus transport from each field;
- (b) the crops to be planted in each field or any other uses of a field such as pasture or fallow fields (including alternative crops identified in the NMP);
- (c) the expected crop yield (goal) for each crop or use identified in (h) above;
- (d) the nitrogen and phosphorus recommendations based on a nutrient needs analysis for each crop based on the appropriate basis (nitrogen- or phosphorus-based application) using the procedure described in Appendix D; and
- (e) the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied:
 - (1) the results of soil tests conducted in accordance with protocols identified in the NMP;
 - (2) credits for all nitrogen in the field that will be plant available;
 - (3) the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied;
 - (4) consideration of multi-year phosphorus application;
 - (5) accounting for all other additions of plant available nitrogen and phosphorus to the field;
 - (6) the form and source of manure, litter, and process wastewater;
 - (7) the timing and method of land application; and
 - (8) the volatilization of nitrogen and mineralization of organic nitrogen.

The terms of the nutrient management plan include alternative crops as identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its NMP, the alternative crops must be listed in addition to the crops identified in the planned crop rotation for that field, and the NMP must include expected crop yield and the nitrogen and phosphorus recommendations from sources identified in Appendix D. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied must be determined in accordance with the methodology described in Appendix D of this permit.

For CAFOs using the narrative approach, the following projections must be included in the NMP

but are not terms of the nutrient management plan: the CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of the impacts of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. The timing of application to each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

CAFOs that use the narrative approach must calculate the maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required Appendix D prior to land-applying manure, litter, and process wastewater the narrative rate approach rely on the following data:

(f) a field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology given in Appendix D, and, for phosphorus the results of the most recent soil test conducted in accordance with soil testing requirements given in Appendix D; and

(g) the results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

4.1.4 Technical Standards for NMP

Protocols to Ensure Appropriate Agricultural Utilization of Nutrients

The field-specific assessment for CAFOs applying manure on fields that are located in a watershed that is listed as impaired for nutrients (total phosphorus or total nitrogen) must follow the method listed in (a). The field-specific assessment for CAFOs applying manure on fields that are not located in a watershed that is listed as impaired for nutrients (total phosphorus or total nitrogen) may follow the procedures in either (a) or (b).

(a) The field-specific assessment must be based on the phosphorus index assessment method described in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) No. 80.1 Nutrient Management, Agronomy Technical Note MT-77. The nutrient application basis is determined as follows:

- (i) nitrogen-based application if the site vulnerability rating is low (total phosphorus index value is less than 11);
- (ii) phosphorus-based if the site vulnerability rating is medium (total phosphorus index value is between 11 and 21);
- (iii) phosphorus-based application up to crop removal if the site vulnerability

rating is high (total phosphorus index value is between 22 and 43); or

(iv) no application if the site vulnerability rating is rated as very high (total phosphorus index value is greater than 43).

(b) The field-specific assessment must be based on a representative soil sample using the Olsen soil test method. The nutrient application basis is determined as follows:

(i) nitrogen-based application if the Olsen phosphorus soil test is less than 25 mg/L;

(ii) phosphorus-based application if the Olsen phosphorus soil test is greater than 25.1 mg/L and less than 100 mg/L;

(iii) phosphorus-based up to crop removal if the Olsen phosphorus soil test is greater than 100.1 mg/L and less than 150.0 mg/L; or

(iv) no application if the Olsen phosphorus soil test is greater than 150 mg/L.

The CAFO shall complete a nutrient needs analysis for each crop to determine the acceptable amounts of nitrogen and phosphorus to be applied to the field based on the appropriate basis (nitrogen- or phosphorus-based application) as determined above. The nutrient needs must be determined using Montana State University Extension Service Publication 161, Fertilizer Guidelines for Montana Crops. For crops not listed in Bulletin 161, the Department may approve a fertilizer application rate provided by the local county extension service or other qualified source. The CAFO must identify the source of the nutrient needs analysis in the NMP.

The CAFO shall complete a nutrient budget based on the nutrients needs of the crop that accounts for all sources of nutrients available to the crop. Other sources that must be addressed where applicable include:

(a) nitrogen reduction credits if a legume crop was grown in the field in the previous year(s);

(b) the nitrogen needs must be reduced based on the nitrogen residual from past manure application and nitrogen mineralization rates;

(c) the nutrient needs must be reduced based on any commercial fertilizer applied, irrigation water, or other sources of nutrients; and

(d) nitrogen availability may be adjusted to reflect the method of application.

A multiyear phosphorus application is allowed for fields that require a nitrogen-based application based on a site-specific assessment (site vulnerability rating less than 22).

As an alternative to the manure application rates based on the criteria given in this part, the CAFO may develop application rates for manure based on NRCS Conservation Practice Standard Code 590.

Testing Procedures

Manure, litter, and process wastewater that is land applied must be sampled at least once per year and analyzed for total nitrogen (as N), ammonium nitrogen (as NH₄-N), total phosphorus (as P₂O₅), total potassium (as K₂O), and percent dry matter (solids). Except for percent dry matter, the results of this analysis should be expressed as pounds per 1,000 gallons for liquid wastes or as pounds per ton for solid manure. The sample must be representative of the manure that is to be land-applied to a field and must be collected and analyzed in accordance with Appendix D.

Each field where manure, litter, and process wastewater is land applied must be sampled at least once every five years and analyzed as follows:

- (a) a composite soil sample must be collected from a depth of zero to six inches below the surface and analyzed for phosphorus using the Olsen soil test method;
- (b) a composite soil samples must be collected from a depth of zero to six inches below the surface and analyzed for total nitrogen (as N) and nitrate (as N). A second composite sample must be collected at a depth of six to 24 inches and analyzed for nitrate (as N) only.

Timing of Application

Manure must be applied to fields at times and under conditions that will hold the nutrients in place for crop growth and protect both surface and ground water by using the best management practices described in the NMP. The intended target spreading dates must be included in the NMP. Manure must not be land applied under the following conditions:

- (a) on land that is flooded or saturated with water; or
- (b) to frozen or snow-covered ground (winter application) except for fields meeting the following criteria:
 - (i) the application area must be at least 300 feet from lakes, stream, intermittent streams, irrigation canals and ditches, open intake structures, property lines and road right-of-way's;
 - (ii) permanent vegetative cover or standing stubble with crop residue greater than 50%; and
 - (iii) land slope of the field must not exceed the following criteria: six percent for application of solid manure (total solids content great than 15%); or, three percent for application of slurry or liquid waste (total solids content of 15% or less).

Calibration of Equipment

Manure application rates and procedures must be consistent with the capabilities, including capacity and calibration range, of the application equipment.

For an existing CAFO, the NMP must include a statement indicating that the existing equipment has been calibrated to ensure delivery of the application rates described in the plan and that it has the capacity to meet those rates. The CAFO shall maintain the supporting documentation onsite and shall make this information available to the Department upon request.

For proposed operations, or when it is not feasible to calibrate the equipment or verify its capacity at planning time, the operator shall perform this application equipment verification prior to the first application of manure.

If a commercial hauler is used, the hauler shall be responsible for ensuring that the equipment can comply with the application rate in the NMP.

Multiyear Phosphorus Application Rate

A multiyear phosphorus application is allowed for fields that require a nitrogen-based application based on a site-specific assessment (site vulnerability rating less than 22) as described in above. When such application is made, the following conditions apply:

- (a) the application may not exceed the recommended nitrogen application rate during the years of application this may include a calculation for fertilizer inefficiencies or the estimated nitrogen removal in harvested plant biomass during the year of application when there is no recommended nitrogen application;
- (b) conservation practices must be included in the NMP and implemented to minimize the risk of phosphorus loss from the field; and
- (c) no additional manure may be applied to the field until the phosphorus applied in the single application has been removed through plant harvest.

4.1.5 Signatory Requirement's

The NMP shall be signed by the permittee in accordance with Part 5.18 of this permit.

5 STANDARD CONDITIONS

The permittee shall meet the following standard conditions of MPDES permits.

5.1 Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Montana Water Quality Act and is grounds for enforcement action; for termination under the General Permit; for revocation and reissuance of a confirmation letter; for a modification requirement; or for denial of coverage under the General Permit (new or renewed). The permittee shall give the Department advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

5.2 Penalties for Violations of Permit Conditions

The Montana Water Quality Act at MCA 75-5-631 provides that in an action initiated by the Department to collect civil penalties against a person who is found to have violated a permit condition of this Act is subject to a civil penalty not to exceed \$25,000. Each day of violation constitutes a separate violation.

The Montana Water Quality Act at MCA 75-5-632 provides that any person who willingly or negligently violates a prohibition or permit condition of the Act is guilty of an offense, and upon conviction, is subject to a fine not to exceed \$25,000 per day of violation or imprisonment for not more than one year, or both, for the first conviction. Following an initial conviction, any subsequent convictions subject a person to a fine of up to \$50,000 per day of violation or by imprisonment for not more than two years, or both.

The Montana Water Quality Act at MCA 75-5-611 provides for administrative penalties not to exceed \$10,000 for each day of violation and up to a maximum not to exceed \$100,000 for any related series of violations. Except as provided in permit conditions “Bypass of Treatment Facilities” and “Upset Conditions”, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

5.3 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 reapplication must be submitted at least 90 days before the expiration date of this permit.

5.4 Need to Halt or Reduce Activity Not a Defense

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

5.5 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.

5.6 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. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

5.7 Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5.8 Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege.

5.9 Duty to Provide Information

The permittee shall furnish to the Department, within a reasonable time, any information which the Department 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 Department, upon request, copies of records required to be kept by this permit.

5.10 Inspection and Entry

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

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

5.11 Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by the Clean Water Act, applications, permits and effluent data shall not be considered confidential.

5.12 Reporting Requirements-Monitoring and Monitoring Reports

The Department may require a permittee to monitor in addition to any conditions in this permit, on a case-by-case basis. If monitoring is required, the Department will specify monitoring requirements to include, and not limited to, storm water sampling, analytical testing, and an evaluation of monitoring results, recording, and reporting. Monitoring results must be reported on a discharge monitoring report (DMR) or as required by the Department. Monitoring results must be reported at the intervals specified.

If the permittee monitors any pollutant more frequently than required, using approved test procedures, the results of this monitoring must be included in the calculation and reporting of data submitted in the DMR. Calculations for all limitations which require averaging of measurements must utilize an arithmetic mean unless otherwise specified by the Department.

5.13 Monitoring and Records-Representative Sampling

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

5.14 Monitoring and Records-Retention of Records

The permittee shall retain records of all monitoring information including all calibrations 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 Department at any time.

5.15 Monitoring and Records-Records Content

Records of monitoring information must include:

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

5.16 Monitoring and Records-Test Procedures

Monitoring must be conducted according to test procedures approved under Title 40 of the Code of Federal regulations (40 CFR) Part 136, unless other test procedures have been specified in this permit, confirmation letter, or by the Department.

5.17 Monitoring and Records-Penalties for Falsification of Reports and Tampering

The Montana Water Quality Act at MCA 75-5-633 provides that any person who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method, or makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than \$25,000 per violation, or by imprisonment for not more than six months per violation, or by both.

5.18 Signatory Requirements

Authorized representatives: All applications, reports or information submitted to the Department or the EPA shall be signed and certified in accordance with ARM 17.30.1323.

All permit notices of intent shall be signed as follows:

- For a corporation: by a principal executive officer or ranking elected official;
- For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
- For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

All reports required by the permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is considered a duly authorized representative only if:

- The authorization is made in writing by a person described above and submitted to the Department; and
- The authorization specified 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 an 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.

Changes to authorization: If an authorization described above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the above requirements must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

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.”

5.19 Reporting Requirements-Planned Changes

The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility, activity, or operation.

Notice is required only when:

- The alteration or addition to the permitted facility, activity, or operation may meet one of the criteria for determining whether a facility is a new source; or
- The alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit.

5.20 Reporting Requirements-Anticipated Noncompliance

The permittee shall give advance notice to the Department of any planned changes in the permitted facility/activity/operation which may result in noncompliance with permit requirements. The permittee shall notify as soon as possible by phone and provide with the following information, in writing, within five (5) days of becoming aware of such condition:

- A description of the discharge and cause of noncompliance; and
- The period of noncompliance including exact dates and times, or if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the non-complying discharge.

5.21 Reporting Requirements-Transfers

Permit coverage is not transferable to any person except after notice is given to the Department and a transfer fee is paid. The Permit Transfer Notification (PTN-SWC) form provided by the Department must be completed and must be received by the Department at least 30 days prior to the anticipated date of transfer. The form must be signed by both the existing owner/operator and the new owner/operator following the signatory requirements of Part 5.18 of the General Permit.

5.22 Reporting Requirements-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 or required by the Department shall be submitted no later than 14 days following each schedule date.

5.23 Reporting Requirements-Twenty-four Hour Reporting

The permittee shall report any serious incident of noncompliance affecting the environment. Any information must be provided orally within 24 hours from the time the permittee first becomes aware of the following circumstances:

- Any noncompliance which may seriously endanger health or the environment;
- Any unanticipated bypass which exceeds any effluent limitation in the permit;
- Any upset which exceeds any effluent limitation in the permit; or
- As applicable, violation of a maximum daily discharge limit of any pollutant listed by the Department in the General Permit or confirmation letter.

A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:

- A description of the noncompliance and its cause;
- The period of noncompliance, including exact dates and times;
- The estimated time noncompliance is expected to continue if it has not been corrected; and
- Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

Oral Notification: The report shall be made orally to the Water Protection Bureau at (406) 444-5546 or the Office of Disaster and Emergency Services at (406) 324-4777.

Waiver of written notification requirement: The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Protection Bureau, by phone, (406) 444-5546. Written reports shall be submitted to the following address:

Montana Department of Environmental Quality
Water Protection Bureau
PO Box 200901
Helena, Montana 59620-0901

5.24 Reporting Requirements-Other Noncompliance

Instances of noncompliance not required to be reported within 24 hours shall be reported as soon as possible. The reports shall contain the information listed above for written submissions under Part 5.23.

5.25 Reporting Requirements-Other Information

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

5.26 Bypass

Intentional diversions of untreated waste streams from any portion of a treatment facility are prohibited unless

- the bypass does not cause effluent to exceed effluent limitations and is necessary for essential maintenance to ensure efficient operation; or
- the bypass is unavoidable to prevent loss of life, personal injury, or severe property damage; or
- there are no feasible alternatives;
- and the proper notification is submitted.

Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass. If the permittee knows in advance of the need for anticipated bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass. The Department may approve an anticipated bypass, after considering its adverse effects. The permittee shall submit notice of an unanticipated bypass as required under Part 5.23.

5.27 Upset Conditions

An upset may be used as an affirmative defense in actions brought to the permittee for noncompliance with a technology-based effluent limitation. The permittee (who has the burden of proof) must have operational logs or other evidence showing:

- when the upset occurred and its causes;
- that the facility was being operated properly;
- proper notification was made; and
- remedial measures were taken as required by the duty to mitigate standard condition.

5.28 Fees

The permittee is required to submit payment of an annual fee as set forth in ARM 17.30.201. If the permittee fails to pay the annual fee within 90 days after the due date for the payment, the Department may:

- Impose an additional assessment computed at the rate established under ARM 17.30.201: and,
- Suspend the processing of the application for a permit or authorization or, if the nonpayment involves an annual permit fee, suspend the permit, certificate or authorization for which the fee is required. The Department may lift suspension at any time up to one year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments and interest imposed under this sub-section. Suspensions are limited to one year, after which the permit will be terminated.

5.29 Removed Substances

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard.

5.30 Oil and Hazardous Substance Liability

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 to which the permittee is or may be subject under Section 311 of the Clean Water Act.

5.31 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.

5.32 Reopener Provisions

This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary), or other appropriate requirements if one or more of the following events occurs:

- **Water Quality Standards:** The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different permit conditions than contained in this permit.
- **Water Quality Standards are Exceeded:** If it is found that water quality standards or trigger values in the receiving stream are exceeded either for parameters included in the permit or others, the Department may modify the permit conditions or water management plan.
- **TMDL or Wasteload Allocation:** TMDL requirements or a wasteload allocation is developed and approved by the Department and/or EPA for incorporation in this permit.
- **Water Quality Management Plan:** A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.

5.33 4.33. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established for toxic pollutants which are present in the discharge, within any specified timeframe within rule or thereof, and even if the General Permit or confirmation letter has not yet been modified to incorporate such standard or prohibition for the toxic pollutant.

6 DEFINITIONS

“25-year 24-hour rainfall event” means a precipitation event with a probable recurrence interval of once in 25 years as defined by the National Weather Service in Technical Paper Number 40, “Rainfall Frequency Atlas of the United States,” May 1961, and subsequent amendments, or the equivalent regional or state rainfall probability information developed therefrom.

“Act” means the Montana Water Quality Act, Title 75, Chapter 5, MCA.

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

“Critical storage period” means the minimum storage period required to store all manure, process wastewater, contaminated stormwater minus evaporation before it can be land applied or transferred offsite.

“Concentrated animal feeding operation” (CAFO) means an AFO that is defined as a Large CAFO or as a Medium CAFO, or that is designated as a CAFO by the Department. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

“Department” means the Montana Department of Environmental Quality.

“Director” means the Director of the Department of Environmental Quality or his/her designee.

“Discharge Monitoring Report” (DMR) means the Department’s uniform form for the reporting of self-monitoring results by permittees.

“Discharge of pollutants” or “Discharge” means any addition of any pollutant or combination of pollutants to state waters from any point source.

“EPA” means the United States Environmental Protection Agency.

“Expected Crop Yield” means the estimated crop yield expressed as bushels per acre or tons per acre, in a future year base on one of the following: where historic crop yield data are available, the expected crop yield must be based on the average of at least 3 years of previous crop yield data (past average yield) using the formula: estimated crop yield = 1.05 times past average yield; or, where historic crop data are unavailable, expected crop yield must be based on realistic yield goals determined from other sources and described in the facility’s NMP.

“Federal Clean Water Act” means the federal legislation at 33 USC 1251, et seq.

“Field” means an area of land that is capable of supporting vegetation and homogeneous with

respect to crop or cover type where manure is to be applied and is under the control of the CAFO owner or operator.

“Hazardous substance” means any substance designated under 40 CFR Part 116 pursuant to section 311 of the federal Clean Water Act.

“Land application area” means land under the control of an AFO 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 (40 CFR 122.23(b)(3)).

“Large concentrated animal feeding operation” (Large CAFO). An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories: 700 mature dairy cows, whether milked or dry; 1,000 veal calves; 1,000 cattle other than mature dairy cows or veal calves. “Cattle” includes but is not limited to heifers, steers, bulls and cow/calf pairs; 2,500 swine each weighing 55 pounds or more; 10,000 swine each weighing less than 55 pounds; 500 horses; 10,000 sheep or lambs; 55,000 turkeys; 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system; 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; 82,000 laying hens, if the AFO uses other than a liquid manure handling system; 30,000 ducks (if the AFO uses other than a liquid manure handling system); or, 5,000 ducks (if the AFO uses a liquid manure handling system).

“Manure” means manure, litter or processed wastewater, including bedding, compost, and raw materials or other materials comingled with manure or set aside for disposal

“Medium concentrated animal feeding operation” (Medium CAFO) means any AFO with the type and number of animals that fall within any of the ranges listed below and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if the type and number of animals that it stables or confines falls within any of the following ranges: 200 to 699 mature dairy cows, whether milked or dry; 300 to 999 veal calves; 300 to 999 cattle other than mature dairy cows or veal calves. “Cattle” includes but is not limited to heifers, steers, bulls and cow/calf pairs; 750 to 2,499 swine each weighing 55 pounds or more; 3,000 to 9,999 swine each weighing less than 55 pounds; 150 to 499 horses; 3,000 to 9,999 sheep or lambs; 16,500 to 54,999 turkeys; 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system; 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system; 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and either one of the following conditions are met: pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or, pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

“Multi-year phosphorus application” means phosphorus applied to a field in excess of the crop needs for that year.

“On-site” means upon the piece of land or property on which the production area is located, including immediately adjacent land used in connection with the facility or activity. (e.g. this includes instances where a business office is located on an immediately adjacent piece of property. This does not include offices, homes, or other facilities on property that does not share an adjoining boundary with the production area.)

“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 (40 CFR 412.2(g)).

“Pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological material, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural wastes discharged into water (ARM 17.30.1304(42)).

“Process wastewater” means water directly or indirectly used in the operation of the AFO 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 AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any 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 confinement 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 is 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.

“Regional Administrator” means the administrator of Region VIII of the United States Environmental Protection Agency, which has jurisdiction over federal water pollution control activities in the state of Montana.

“Total phosphorus index value” means the sum of the weighted risk factors for a field as determined by Table 3 (Phosphorus Index Assessment) in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management, Agronomy Technical Note MT-77 (revision 3), January 2006.

“State waters” or “waters of the state” means a body of water, irrigation system, or drainage system, either surface or underground. The term does not apply to the following: ponds or

lagoons used solely for treating, transporting, or impounding pollutants; or, irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

“Toxic pollutant” means any pollutant listed as toxic pursuant to section 1317(a)(1) of the federal Clean Water Act and set forth in 40 CFR Part 129.

7 Appendices

7.1 Appendix A – Notice of Intent (NOI)

7.2 Appendix B – Nutrient Management Plan (NMP)

7.3 Appendix C – Annual Report Form (AR)

7.4 Appendix D – Technical Standards for CAFOs