

NPDES Number: VTG910002

STATE OF VERMONT
AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT 3-9100
FOR DISCHARGES FROM
MEDIUM CONCENTRATED ANIMAL FEEDING OPERATIONS

In compliance with the provisions of the Vermont Water Pollution Control Act, 10 V.S.A. Chapter 47, the Vermont Water Pollution Control Rules, the Federal Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and implementing regulations, owners and operators of medium concentrated animal feeding operations (CAFOs) in Vermont, except those CAFOs excluded from coverage in Part I of this permit, are authorized by the Secretary, Vermont Agency of Natural Resources, Montpelier, Vermont, to discharge in accordance with the effluent limitations, monitoring requirements, and all other terms and conditions set forth herein.

A copy of this permit and any authorization to discharge must be kept by the permittee at the site of the permitted activity.

This permit shall become effective on the date of signing.

This permit shall expire five years after the date of signing.

By: _____



Date: _____

6/21/13

David K. Mears, Commissioner
Department of Environmental Conservation

PART I. PERMIT AREA AND COVERAGE UNDER THIS PERMIT

A. Permit Area

This permit offers National Pollutant Discharge Elimination System (NPDES) permit coverage in the state of Vermont for discharges from operations eligible for coverage under Subpart I.B. of this permit.

B. Permit Coverage

This permit covers any operation which:

1. Is located within the permit areas as defined by Subpart I.A. of this permit;
2. Meets the definition of an Animal Feeding Operation (AFO), which means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:
 - a) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
 - b) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility;
3. Meets the definition of a Medium CAFO which includes 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 by the Secretary or the EPA Region 1 Regional Administrator pursuant to 40 CFR § 122.23(c)) 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 one or more of the ranges in the Table below:

Animal Type	Number
Cattle other than mature dairy cows or veal calves (cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs)	300-999 Animals
Mature dairy cows (milked or dry)	200-699 Animals
Horses	150-499 Animals
Veal calves	300-999 Animals
Swine \geq 55 pounds	750-2499 Animals
Swine $<$ 55 pounds	3000-9999 Animals
Sheep and lambs	3000-9999 Animals
Ducks with liquid manure handling	1500-4999 Animals
Chickens (laying hens or broilers) if the AFO uses a liquid manure handling system	9000-29999 Animals

Ducks if the AFO uses other than a liquid manure handling system	10000-29999 Animals
Laying hens if the AFO uses other than a liquid manure handling system	25000-81999 Animals
Chickens (other than laying hens) if the AFO uses other than a liquid manure handling system	37500-124999 Animals
Turkeys	16500-54999 Animals

4. Meets either one of the following conditions:

- a) Pollutants are discharged into waters of the State through a man-made ditch, flushing system, or other similar man-made device; or
- b) Pollutants are discharged directly into waters of the State 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; and

5. Is eligible for permit coverage as defined in Subpart I.C. of this permit.

Once an AFO meets the definition of Medium CAFO above, for at least one type of animal, the requirements of this permit apply with respect to all animals in confinement at the operation and to all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

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.

C. Eligibility for Coverage

Unless excluded from coverage in accordance with Subpart I.D. or Subpart I.E. of this permit, owners/operators of AFOs that are defined as Medium CAFOs, or designated as Medium CAFOs by the Secretary or the EPA Region I Regional Administrator, are eligible for coverage under this permit. Upon the submission of a Notice of Intent (NOI) to discharge and a site-specific Nutrient Management Plan (NMP) that meets the requirements of this permit, and subsequent authorization from the Secretary, eligible Medium CAFOs are authorized by the Secretary to discharge in accordance with the terms and conditions of this general permit and the site-specific NMP incorporated by reference into this permit. Authorization under this general permit only applies to discharges that occur after permit coverage is granted.

Owners or operators of a Medium CAFO that discharges to waters of the State choosing to seek coverage under this general permit, as opposed to applying for an individual permit, must apply for coverage as soon as possible.

D. Limitations of Coverage

This permit does not authorize:

1. CAFOs that have been notified by the Secretary to apply for an individual NPDES permit in accordance with Subpart I.E. of this permit.
2. CAFOs that have been notified by the Secretary that they are ineligible for coverage under this general permit due to a past history of non-compliance.
3. New dischargers (as defined in 40 C.F.R. § 122.2) to water quality impaired waters unless the owner or operator:
 - a) Prevents any discharges that contain the pollutant(s) for which the waterbody is impaired and includes documentation of procedures taken to prevent such discharge(s) in the facility's NMP, or
 - b) Documents that the pollutant(s) for which the waterbody is impaired is not present at the facility and retains documentation of this finding with the NMP, or
 - c) In advance of submitting the NOI, provides data to support that the discharges are not expected to cause or contribute to an exceedance of water quality standards and retains such data onsite with the NMP. The operator must provide data and other technical information to the Secretary sufficient to demonstrate:
 - (1) for discharges to waters without an EPA approved or established TMDL, that the discharge of the pollutant for which the water is impaired will meet in-stream water quality criteria at the point of discharge to the waterbody, or
 - (2) for discharges to waters with an EPA approved or established TMDL, that there are sufficient remaining wasteload allocations in an EPA approved or established TMDL to allow the facility's discharges and existing dischargers to the waterbody to bring the waterbody into attainment with water quality standards.

Owners and Operators subject to Subpart I.D.3. above are eligible for coverage under this permit only if they receive an affirmative determination from the Secretary that the discharge will not cause or contribute to the existing impairment. The operator must maintain such determination onsite with the NMP.

4. CAFOs with discharges to an Outstanding Resource Water.

E. Requiring an Individual Permit

The Secretary may at any time require any person who files a NOI, or who already is authorized to discharge under this general permit, to apply for an individual permit if:

1. The Medium CAFO does not qualify for coverage under this general permit; or
2. The Secretary finds that an individual permit is required pursuant to 40 C.F.R. §

122.28(b)(3) or the Vermont Water Pollution Control Permit Regulations Chapter 13, § 13.12(D).

The Secretary will notify the owner/operator, in writing, that an application for an individual permit is required. Coverage under this general permit is automatically terminated when the Secretary issues the individual permit. The Secretary may terminate a CAFO's coverage under this general permit if the CAFO fails to submit an application for an individual permit within 60 days after being notified by the Secretary that such an application is required.

F. Coverage under Existing Individual Permits

Medium CAFOs that are covered under an existing individual permit issued by the Secretary are not required to obtain coverage under this permit during the permit term of the individual permit. However, a Medium CAFO must apply for coverage under this permit at least 90 days prior to the expiration date of its individual permit if it discharges to waters of the State and is eligible under Subpart I.C.

PART II. APPLICATION FOR COVERAGE

A. Application - Notice of Intent Forms and Fee

Application for coverage under this permit shall be made by filing a NOI with all necessary attachments on forms provided by the Secretary. The application shall include the information required under Subpart II.B. below as well as a copy of a proposed NMP consistent with Part IV. and Appendix A of this permit. The completed and signed NOI, including the proposed NMP, shall be filed with the Agency of Natural Resources (ANR), together with an administrative fee as established by 3 V.S.A. § 2822 at the following address:

Vermont Department of Environmental Conservation
Attn: CAFO Program Manager
Watershed Management Division
Main Building, 2nd Floor, One National Life Drive
Montpelier, Vermont 05620-3522

B. Contents of the NOI

The NOI submitted for coverage under this permit shall include, at a minimum, the following information:

1. Name(s) of the CAFO owner(s) and operator(s);
2. Facility location(s) and mailing address(es);
3. Latitude and longitude of the production area(s) (entrance to production area(s));
4. Topographic map of the geographic area in which the CAFO is located, showing the specific location of the production area, land application area, irrigation and domestic wells, and the name(s) and location(s) of the nearest surface waters;

5. A diagram of the production area(s):
6. Specific information about the number and type of animals (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other), whether in open confinement or housed under roof;
7. Type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);
8. Total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;
9. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons);
10. Estimated amounts of manure, litter, and process wastewater transferred to other persons per year (tons/gallons); and
11. A proposed NMP that, at a minimum, satisfies the requirements specified in Part IV. of this permit.

C. Additional Information

The Secretary reserves the right to return an application that is incomplete or inaccurate or does not meet the requirements of this permit. The Secretary may require an applicant to submit additional information that the Secretary considers necessary in order to make a decision on the eligibility for, or the issuance or denial of, an authorization to discharge pursuant to this permit. The Secretary may deny an authorization to discharge pursuant to this permit if the additional information requested is not provided to the Secretary within 60 days of the Secretary's request or if any additional information submitted is inadequate for the Secretary to make a decision on the eligibility for, or the issuance or denial of, an authorization to discharge pursuant to this permit.

D. Public Notice of NOI and NMP

Any person who files an NOI shall at the same time provide a copy of the completed NOI form to the municipal clerk for posting for 30 days in the municipality in which the discharge is located. If the Secretary issues an authorization to discharge under this permit and the Secretary later determines that the applicant failed to provide notice to the municipal clerk in accordance with this subpart, the Secretary may revoke coverage under this permit in accordance with Subpart VI.P. or may take any appropriate enforcement action in accordance with Part VI. of this general permit.

E. Public Comments on NOI and Draft NMP

Upon preliminary determination that an application is complete and meets the requirements of this permit, the Secretary shall post a copy of the NOI and all attachments, including the draft

NMP, on the Department's website and shall provide notice pursuant to 40 CFR § 124.10 to the applicant; those persons and entities on an interested parties list, if any; and to appropriate local, state, and federal governmental entities. The Secretary shall provide an opportunity for written comments regarding whether the NOI and all necessary attachments, including the draft NMP, comply with the terms and conditions of this permit. Any interested person may file comments with the Secretary during the 30 day period following electronic posting. Should the Secretary extend or reopen the public comment period, the Secretary will so notify the applicant and those persons who file comments or a letter of interest. The Secretary may extend the public comment period if additional information is requested by the Secretary pursuant to Subpart II.C. of this permit. The Secretary will respond to significant comments received during the public comment period and, if necessary, require the CAFO owner or operator to revise the NOI and/or NMP in order to be granted coverage under this permit. When the Secretary authorizes coverage for the CAFO owner or operator under this general permit, the Secretary shall notify the CAFO owner or operator and inform the public that coverage has been authorized and that the entire site-specific NMP has been incorporated into the permit.

Any request for a public hearing must be made in writing either prior to or during the 30 day public comment period. The Secretary will follow the process for public hearings as specified in 40 CFR §§ 124.11-124.13.

F. Authorization to Discharge and Filing in Public Record

Any person who files a NOI, along with a NMP, that meets the requirements of this permit, shall be authorized to discharge under the terms of this permit upon the receipt of a written authorization to discharge from the Secretary. The approved NOI and the entire site-specific NMP shall be incorporated by reference and included in the terms and conditions of this permit. A permittee shall comply with all terms and conditions of this general permit and all authorizations issued hereunder. Any permit noncompliance shall constitute a violation of 10 V.S.A. Chapter 47 and/or the federal Clean Water Act, and related regulations and may be cause for an enforcement action and/or revocation, modification, or suspension of the permittee's authorization to discharge under this general permit.

Upon receipt of an authorization to discharge under this general permit, the permittee shall file the authorization in the local land records within 14 days of the issuance of the authorization. A copy of the recording shall be submitted to the Secretary within 14 days of the permittee's receipt of a copy of the recording from the local land records.

G. Failure to Obtain Authorization to Discharge

Dischargers who fail to receive from the Secretary either authorization of coverage under this general permit or authorization to discharge under an individual permit, and who discharge to waters of the State without a permit, are in violation of 10 V.S.A. Chapter 47 and the federal Clean Water Act.

H. Authorization to Discharge Expiration and Reapplication

An authorization to discharge shall expire five years from its effective date. If a Medium CAFO discharges to waters of the State, a permittee must reapply for permit coverage at least

180 days prior to the expiration date of its authorization to discharge under this permit. Provided the permittee has reapplied in accordance with this subpart, the expired authorization continues in full force and effect until a new authorization is issued or any of the four conditions listed below in Subpart II.I. occur.

I. Continuation of the Expired General Permit

If this general permit is not reissued or replaced prior to its expiration date, but the Secretary makes a determination that it will be renewed, this general permit will be administratively continued and remain in full force and effect. Any permittee whose authorization expires after the expiration date of this general permit will automatically remain covered by the continued general permit until the earliest of the following:

1. Reissuance or replacement of this general permit, at which time the permittee must comply with the conditions of the new permit to maintain authorization to discharge;
2. Issuance of an individual permit for the discharge;
3. A formal permit decision by the Secretary not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit; or
4. The permitting authority grants the permittee's request for termination of permit coverage made pursuant to Subpart II.J. below.

J. Request for Termination of Permit Coverage

A permittee may request that coverage under this permit be terminated. Coverage may only be terminated if a permittee demonstrates to the Secretary's satisfaction that at least one of the following three conditions is met:

1. The facility has ceased all operations and all waste retention structures have been properly closed in accordance with the closure provisions contained in Subpart V.A. of this permit and with the March 2011 Vermont Natural Resources Conservation Service (NRCS) Conservation Practice Standard #360 and all other remaining stockpiles of manure, litter, or process wastewater not contained in a wastewater or manure storage structure are properly disposed;
2. The facility is no longer a CAFO that discharges manure, litter, or process wastewater to waters of the State, based on a demonstration that the circumstances that led to the discharges at the CAFO have been changed or corrected and fully and permanently remedied; or
3. The entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works.

The permittee must submit a **complete and signed Request for Termination of Coverage form** to the Secretary documenting that at least one of the three conditions above has been met. Upon receipt of the required request form, the Secretary shall have the discretion to require from the permittee any additional information the Secretary deems necessary to

support the request for termination.

Coverage under this permit shall be terminated upon receipt of a written determination by the Secretary that the Request for Termination of Coverage filing is complete and at least one of the conditions specified above has been satisfied.

K. Transfer of Ownership

Any permittee may transfer the authorization to discharge under this permit by submittal of a **complete and signed Transfer of Authorization to Discharge Form** to the Secretary. The notice shall be submitted at least 30 days prior to the proposed date of transfer and shall include the following:

1. The name and address of the present permittee;
2. The name and address of the prospective permittee;
3. The proposed date of transfer; and
4. A statement signed by the prospective permittee, stating that:
 - a) The conditions of the facility operation that contribute to, or affect, the discharge will not be materially different under the new ownership;
 - b) He/she has read and is familiar with the terms of the permit and agrees to comply with all terms and conditions of the permit;
 - c) He/she has read and is familiar with the terms of the NMP and agrees to comply with all the terms of the NMP; and
 - d) He/she has adequate funding to operate and maintain the treatment system and remain in compliance with the terms and conditions of the permit.

The transfer shall become effective on the proposed date of transfer contained in the completed and signed Transfer of Authorization to Discharge Form if the permittee has complied with all of the requirements of this section of the general permit, provided that the Secretary does not notify the existing permittee and the proposed new permittee before the proposed transfer date of the Secretary's intent to modify or revoke and reissue the authorization to discharge under the permit.

PART III. EFFLUENT LIMITATIONS AND STANDARDS

A. Effluent Limitations and Standards Applicable to the Production Area

1. The discharge of manure, litter, or process wastewater (e.g., silage leachate, milk house wastewater) from the production area into waters of the State is prohibited, except as provided below:

- a) Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into waters of the State provided:
- (1) The production area is properly 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 storm event for the location; and
 - (2) The design storage volume is adequate to contain all manure, litter, and process wastewater accumulated during the storage period, considering, at a minimum, the following:
 - i. The volume of manure, litter, process wastewater, and other wastes accumulated during the storage period;
 - ii. Normal precipitation less evaporation during the storage period;
 - iii. Normal runoff during the storage period;
 - iv. The direct precipitation from the 25-year, 24-hour storm event;
 - v. The runoff from the 25-year, 24-hour storm event from the production area;
 - vi. Residual solids after liquid has been removed;
 - vii. Sediment load in the runoff from the Production Area;
 - viii. Freeboard must be in compliance with the standards set forth in Vermont NRCS Conservation Practice Standard #313; and
 - ix. A minimum treatment volume, in the case of treatment lagoons; and
- b) The permittee is in compliance with all the conditions in this general permit.

2. The permittee shall ensure that its discharges are controlled as necessary to meet applicable water quality standards.
3. Discharges to Water Quality Impaired Waters:

In addition to the requirement to meet the terms and conditions of Subparts III.A.1. and A.2. above, the CAFO must also comply with the following:

- a) If the CAFO discharges to an impaired water with an EPA approved or established TMDL, the Secretary will inform the permittee if any additional limits or controls are necessary for the discharge to be consistent with the assumptions of any available wasteload allocation in the TMDL, or if coverage under an individual permit is necessary. Any additional limits or controls shall be included in the facility's NMP.

- b) If the CAFO discharges to an impaired water without an EPA approved or established TMDL, the Secretary will inform the permittee if any additional limits or controls are necessary to meet water quality standards, or if coverage under an individual permit is necessary. Any additional limits or controls shall be included in the permittee's NMP.
 - c) If a CAFO's authorization for coverage under this permit relied on Subpart I.D. of this permit for a new discharge to an impaired water, the permittee must implement and maintain any control measures or conditions on its site that enabled the CAFO to become eligible under Subpart I.D. Any additional control measures or conditions shall be included in the permittee's NMP.
 - d) If at any time the permittee becomes aware, or the Secretary determines, that a discharge to an impaired water has occurred and the requirements of Subpart III.A.3.a-c, above, have not been addressed, the permittee must take corrective action to fulfill the requirements of Subpart III.A.3.a-c above.
 - e) Any changes to the NMP required to fulfill the requirements of Subpart III.A.3.a-c above, shall be made in accordance with Subpart IV.A.5. of this permit.
4. The discharges referred to in this Part III. of the general permit are those discharges that may occur despite compliance with all of the terms and conditions of this permit. Part III. of the general permit is not in any way intended to authorize any discharge that results from noncompliance with any term or condition of this permit.
5. Other Requirements and Prohibitions Applicable to the Production Area:
- a) Once a CAFO facility has been closed pursuant to all applicable requirements, including those in Subpart V.A. below, any stormwater discharge to waters of the State from the CAFO's former production area containing bacteria in excess of water quality standards is prohibited.
 - b) Discharges of pollutants from the production area to surface waters during dry weather conditions are prohibited.
 - c) All discharges to wastewater retention facilities shall be composed entirely of manure, litter, or process wastewater from the proper operation and maintenance of the CAFO, and the precipitation from the animal confinement, storage, and handling areas. The disposal of other materials (including mortalities and chemicals or other contaminants) into these wastewater retention facilities is prohibited unless specifically designed to treat such additions.
 - d) Animals confined at production areas of existing CAFOs shall not be allowed to come into direct contact with waters of the State.
 - e) New CAFOs shall not be built in a water of the State.
 - f) CAFOs constructing new wastewater retention facilities or modifying existing retention facilities shall insure that all retention structure design and construction will, at a minimum, be in accordance with the technical standards developed by the

Vermont NRCS. The permittee must use those standards that are most current at the time of construction. Existing retention facilities that have been properly maintained and show no signs of structural breakage will be considered to be properly constructed.

B. Effluent Limitations and Standards Applicable to the Land Application Area

1. There shall be no discharge of manure, litter, or process wastewater to a water of the State from a CAFO as a result of the application of manure, litter, or process wastewater to land areas under control of the CAFO, except where it is an agricultural storm water discharge. Land application of all nutrients must correspond to rates specified in the NMP. When manure, litter, or process wastewater have been applied in accordance with the CAFO's approved site-specific NMP in a manner that ensures appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, a precipitation related discharge of manure, litter, or process wastewater from land areas under the control of the CAFO is considered to be an agricultural storm water discharge.
2. Manure, compost, plant nutrients, milkhouse waste, washwater, leachate, used bedding, carcasses, barnyard runoff, process wastewater, or other wastes shall not be applied to land from December 15th through April 1st of each year unless explicitly authorized by the Secretary of Agriculture pursuant to 6 V.S.A. § 4810 and approved on a case-by-case basis by the Secretary of Natural Resources. The Secretary of Natural Resources must find that the activity will be consistent with the terms and conditions of this general permit and the site-specific NMP.
3. Manure, compost, plant nutrients, milkhouse waste, washwater, leachate, used bedding, carcasses, barnyard runoff, process wastewater, or other wastes shall not be applied to land when the ground is frozen, spread in such a way as to run off the intended site during application or spread in diversions, grassed waterways, drainage ditches, or in such a manner as to enter surface water.
4. Manure, compost, process wastewater, or other wastes spread on row cropland that is subject to annual overflow from adjacent surface waters shall be incorporated within 48 hours. This shall not apply to no-till land or land planted to cover crops.
5. There shall be no dry weather discharges from land application sites.
6. Areas shall be identified that, due to topography, activities, or other factors, have a high potential for soil erosion. Where these areas have the potential to contribute pollutants to waters of the State, the permittee shall identify measures to limit land-based erosion and pollutant runoff.
7. Conservation practices shall be in place to assure that there are no discharges of manure, litter, or process wastewater from the production area to waters of the State.
8. Irrigation Control: Irrigation systems shall be managed in accordance with Vermont NRCS Conservation Practice Standard #449, so as to minimize the ponding or puddling of wastewater on land application fields, the contamination of ground and

surface water, and the occurrence of nuisance conditions such as odor and flies.

C. Compliance with Vermont Water Quality Standards and Anti-Degradation

The requirements of this permit reflect the goal of the federal Clean Water Act and Vermont law to achieve and maintain water quality standards. Federal regulations pertaining to the state anti-degradation policies are found at 40 C.F.R. § 131.12. Vermont's anti-degradation policy is set forth in Section 1-03 of the Vermont Water Quality Standards. The effluent limitations and requirements contained in this general permit, including but not limited to the Secretary's approval of a site-specific NMP, are designed to ensure compliance with the Vermont Water Quality Standards, including Vermont's anti-degradation policy.

PART IV. NUTRIENT MANAGEMENT PLAN

A. Nutrient Management Plan

The permittee shall develop, sign, submit to the Secretary for approval, and implement and maintain a NMP that, at a minimum, specifically identifies and describes best management practices necessary to meet the requirements of Parts III. and IV. and Appendix A of this general permit. Further, the NMP shall be developed in accordance with the Vermont NRCS Conservation Practice Standard Code #590, in addition to any other applicable state law requirements. The permittee shall implement the NMP approved by the Secretary in accordance with the terms and conditions of the NMP which is incorporated by reference into this general permit by the Secretary.

1. NMP Content

The site-specific NMP at a minimum must include practices and procedures necessary to implement the applicable effluent limitations and standards contained in or referenced in this permit. In addition, the NMP and each CAFO covered by this permit must, to the extent applicable:

- a) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities. Storage capacity must be sufficient to meet requirements specified in Subpart III.A.1.a.(1)-(2).
- b) Prohibit the disposal of mortalities (i.e. dead animals) in any liquid manure, stormwater, or process wastewater storage or treatment system that is not specifically designed to handle animal mortalities, and provide that mortalities are handled in such a way as to prevent the discharge of pollutants to waters of the State. The disposal of animal mortalities shall be in compliance with all applicable state and local regulatory requirements, including September 2010, Vermont NRCS, Conservation Practice Standard Code #316.
- c) Ensure that clean water is diverted, as appropriate, from the production area. Open lots and associated wastes shall be isolated, as appropriate, from run-on from outside surface drainage by ditches, dikes, berms, terraces, or other such structures

designed to carry peak flows expected at times when a 25-year, 24-hour rainfall event occurs. Clean water and flood waters must be diverted, as appropriate, from contact with feedlots and holding pens, and manure and/or process wastewater storage systems. In cases where it is not feasible to divert clean water from the production area, the retention structures shall include adequate storage capacity for the additional clean water. Clean water includes rain falling on the roofs of facilities, runoff from adjacent land, or other sources.

- d) Prevent direct contact of animals confined in the production area with waters of the State.
- e) Ensure that chemicals and other contaminants are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system, unless specifically designed to treat such chemicals or other contaminants. The NMP shall include references to any applicable or authorized chemical handling protocols.
- f) Identify appropriate site-specific conservation practices to be implemented, including as appropriate: buffers or equivalent practices, to control runoff of pollutants to waters of the State. These practices may include residue management, crop rotation, grassed waterways, buffers, reduced tillage, setbacks, and diversions. At a minimum, such practices must be adequate to keep erosion levels in each field at or less than the soil loss tolerance (T) value specified in the NRCS Field Office Technical Guide.
- g) Ensure that at least one third of all fields have a soil test less than three years old when developing the NMP. A soil test that is three to five years old may be used for developing the NMP if application rates of nutrients will be planned at a rate no greater than the phosphorus removal rate and revised accordingly within one year based on current soil tests. Soil samples shall be collected and prepared according to University of Vermont "Nutrient Recommendations for Field Crops in Vermont" and shall use the Modified Morgan Extract for available phosphorus and aluminum.
- h) Establish protocols to land apply manure, litter, and/or process wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, and/or process wastewater. The permittee's site specific NMP shall document the calculation of land application rates of manure, litter, and/or process wastewater. Nutrient recommendations shall be made based on the University of Vermont "Nutrient Recommendations for Field Crops in Vermont" (and/or industry practice when recognized by the University). Application rates may be expressed in NMPs consistent with one of the two approaches described in Appendix A.
- i) Identify areas that, due to topography, activities, or other factors, have a high potential for runoff and/or soil erosion. Where these areas have the potential to contribute pollutants to waters of the State, the NMP shall identify measures to limit erosion and pollutant runoff.
- j) Ensure that a buffer zone of perennial vegetation is maintained between annual

croplands and the top of the bank of adjoining surface waters, including intermittent waterways that are determined to potentially transport significant waste or nutrients (Vermont NRCS Conservation Practice Standard #590). The buffer zone must be consistent with (1) through (5) below, in order to filter out sediments, nutrients, pathogens, and agricultural chemicals and to protect the surface waters from erosion of streambanks due to excessive tillage.

- (1) Adjoining surface waters must be buffered from croplands by at least 25 ft. of perennial vegetation. If the buffer is heavily used, for example by vehicular traffic, it cannot count towards the 25 ft. buffer requirement. If the buffer is not heavily used and is adequately working as a grassed buffer according to the NRCS technical standards then it can count towards the 25 ft. buffer.
 - (2) No manure, compost, process wastewater, or other wastes shall be applied within vegetative buffers.
 - (3) Use of fertilizer for the establishment and maintenance of the vegetative buffer is allowed.
 - (4) Tillage shall not occur in a vegetative buffer except for the establishment or maintenance of the buffer.
 - (5) Harvesting the buffer as a perennial crop is allowed.
- k) Ensure that private wells shall be protected by a 50 ft. nutrient setback. Manure or process wastewater application, fertilizer application, and pasturing of livestock shall not occur within 50 ft. of a private well.
 - l) Identify specific records that shall be identified in the NMP and maintained to document the implementation and management of the minimum elements described in Subpart IV.A.1. a. through k. above.
 - m) Inspect periodically for leaks the equipment used for land application of manure, litter, or process wastewater.

2. NMP Recordkeeping Requirements

- a) The permittee shall create and maintain a complete copy of the documentation required by this permit, including the documentation identified in Subpart IV.A.1. above, on-site for a period of five years from the date they are created. Such records shall be made available to the Secretary upon request.
- b) The permittee shall maintain, on-site, a copy of the CAFO's site-specific NMP and make it available to the Secretary upon request.

Table IV. A. NPDES Medium CAFO Permit Recordkeeping and Monitoring Requirements

(Note: Requirements in this chart are enforceable terms and conditions of this permit.)

Parameter	Units	Frequency
<i>Permit and NMP</i>		
CAFO must maintain on-site a copy of the current NPDES permit including the permit authorization notice	n/a	Maintain at all times
CAFO must maintain on-site a current site-specific NMP that reflects existing operational characteristics. The operation must also maintain on-site all necessary records to document that the NMP is being properly implemented with respect to manure and wastewater generation, storage and handling, land application, and other minimum practices described in 40 C.F.R. § 122.42(e)	n/a	Maintain at all times
Analysis of manure containment system contents to determine nitrogen and phosphorus content (according to NRCS Standard #590)	Ppm Pounds/ton	At least annually after initial sampling
Analysis of soil in all fields where land application activities are conducted to determine nitrogen and phosphorus content (according to NRCS Standard #590)	Ppm	At least every 3 years after initial sampling
Documentation of adequate storage capacity to meet permit requirements	n/a	Once in NMP
Documentation of animal mortality handling practices	n/a	Once in NMP unless revised
Documentation of any practices used to ensure clean water diversion as appropriate	n/a	Once in NMP unless revised
Documentation of waters of the State, if any, within animal confinement areas and measure implemented to prevent animal contact	n/a	Once in NMP unless revised
Identify chemicals used or stored (or both) on-site and document appropriate disposal methods	n/a	Once in NMP unless revised
Document conservation practices used to control pollutant runoff, and implemented protocols and procedures to control pollutant runoff	n/a	Once in NMP unless revised
Documentation of all overflows from all manure and process wastewater storage structures including:		
• Date and time of overflow	m/d/yr	Per event
• Estimated volume of overflow	Tons/gallons	Per event
• Analysis of overflow	Ppm	Per event
<i>Manure transfer</i>		
For all manure transfers the CAFO must maintain the following records:		
• Date of transfer	m/d/yr	As necessary

• Name and address of recipient	n/a	As necessary
• Approximate amount of manure, litter, or process wastewater transferred	Tons/gallons	As necessary
• Representative information on the nutrient content	n/a	As necessary

3. Annual Reporting Requirements

The permittee shall submit an annual report to the Secretary by April 30 of each year, which shall include information for the previous 12 months (i.e., from April 1 of the preceding calendar year through March 31 of the current calendar year), to the address listed under Subpart II.A. of this permit.

The annual report shall include the following information:

- a) The maximum number of each type of animal, whether in open confinement or housed under roof (beef cattle, mature dairy cows, dairy heifers, veal calves, sheep, lamb, swine, horses, laying hens, broilers, ducks, turkeys, other) in the previous 12 months;
- b) Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- c) Estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);
- d) Total number of acres for land application covered by the NMP approved by the Secretary;
- e) Total number of acres under control of the CAFO that were used for land application of manure, litter, or process wastewater in the previous 12 months;
- f) Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume;
- g) A statement indicating the certified planner who developed the NMP or documentation that the plan was approved by a certified planner.
- h) The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with Appendix A paragraph 2.d. of this permit, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a NMP that addresses rates of application in accordance with Appendix A paragraph 2 of this permit, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with Appendix A paragraph 2.d. of this permit, and the amount of any supplemental fertilizer applied during the previous 12 months.

4. Terms of the Nutrient Management Plan

The permittee shall comply with the CAFO's site-specific NMP approved and incorporated by reference into this general permit by the Secretary. The terms of the NMP are the information, protocols, best management practices, and other conditions in the NMP determined by the Secretary to be necessary to meet the requirements of Parts III. and IV.A. and Appendix A of this general permit. The terms of the NMP, with respect to protocols for land application of manure, litter, or process wastewater required by Part IV.A.1. i), must include the fields available for land application; field-specific rates of application properly developed in accordance with, and limited to the options contained in Appendix A of this general permit to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the NMP concerning land application on the fields available for land application. The terms must address rates of application as specified in Appendix A in accordance with 40 C.F.R. § 122.42(e)(5) and NRCS Nutrient Management Practice Standard Code #590.

5. Changes to a NMP

These procedures shall apply when a CAFO owner or operator makes changes to the CAFO's NMP previously submitted to and approved by the Secretary. The NMP shall be modified as necessary to reflect best management practices, operation and maintenance procedures, and infrastructure improvements implemented by the facility to fulfill the requirements of this general permit.

- a) The CAFO owner or operator must provide the Secretary with the most current version of the CAFO's NMP and identify changes from the previous version, except that the result of calculations made in accordance with the requirements of Subpart IV.A. and Appendix A of this permit are not subject to the requirements included in this section.
- b) The Secretary must review the revised NMP to ensure that it meets the requirements of this section and applicable effluent limitations and standards, and must determine whether the changes to the NMP are substantial. The Secretary will determine whether such changes are substantial changes as described in Subpart 5.c) below.
 - (1) If the Secretary determines that the changes to the NMP are not substantial, the Secretary will make the revised NMP publicly available and include it in the record, incorporate the revised NMP into the permit, and notify the owner or operator and inform the public of any changes to the NMP.
 - (2) If the Secretary determines that the changes to the NMP are substantial, the Secretary will notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public comments, hearing requests, notices of hearings, and a hearing, if a hearing is held, will follow the procedures referenced in Part II.E. of this general permit. In order to approve the review of the NMP incorporated into the permit, the Secretary will respond to all significant comments received during the public comment period and

require the CAFO owner or operator to further revise the NMP if necessary. Once the Secretary incorporates the revised NMP into the permit, the Secretary will notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

c) Substantial changes to a NMP include:

- (1) Addition of new land application areas not previously included in the CAFO's NMP. An exception would be a land application area that is already covered by terms of a NMP incorporated into an existing NPDES permit in accordance with the requirements contained in Subpart IV.D. and Appendix A of this permit, and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly added land application area. Such addition of new land would be a change to the new CAFO owner or operator's NMP but not a substantial change for purposes of this section;
- (2) Any changes to the field-specific maximum annual rates for land application, as set forth in Subpart IV.A. and in accordance with Appendix A of this permit, and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in Subpart IV.A. and Appendix A of this permit;
- (3) Addition of any crop or other uses not included in the terms of the CAFO's NMP and corresponding field-specific rates of application expressed in accordance with Part IV.A. and Appendix A of this permit; and
- (4) Changes to site-specific components of the CAFO's NMP, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the State.

6. Certified Planners to develop NMPs

Owners/operators of CAFOs shall use a certified planner to develop, modify, review, and/or approve the NMP required by this permit. A certified planner is an individual who has demonstrated the capacity to develop NMPs in accordance with applicable USDA-NRCS standards, state standards, and when applicable, meet EPA CAFO effluent guidelines, NMP requirements, and NPDES permit requirements. The certified planner must be certified through the USDA/NRCS or an equivalent certification program sanctioned by USDA/NRCS. The CAFO owner/operator remains solely responsible for assuring the NMP is properly developed and implemented and complies with all applicable permit conditions.

Should the owner/operator already have an NMP that was developed by the permittee, the permittee must demonstrate that the plan has been approved per the above standards.

PART V. SPECIAL CONDITIONS

A. Facility Closure

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

1. Closure of Lagoons and Other Surface Impoundments
 - a) No lagoon or other earthen or synthetic lined basin shall be permanently abandoned.
 - b) Lagoons and other earthen or synthetic lined basins shall be maintained at all times until closed in compliance with this section.
 - c) All lagoons and other earthen or synthetic lined basins must be properly closed if the permittee ceases operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of 12 consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either:
 - (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. In either case, the permittee shall notify the Secretary, in writing, of the action taken, and shall conduct routine inspections, maintenance, and record keeping as though the structure were in use. Prior to restoration of use of the structure, the permittee shall notify the Secretary, in writing, and provide the opportunity for inspection. The permittee shall properly handle and dispose of the water used to preserve the integrity of the synthetic or earthen liner during periods of non-use in accordance with the NMP.
 - d) All closure of lagoons and other earthen or synthetic lined basins shall be consistent with the March 2011 Vermont NRCS Conservation Practice Standard #360. Consistent with this standard the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittee's NMP, unless otherwise authorized by the Secretary.
 - e) Unless otherwise authorized by the Secretary, completion of closure for lagoons and other earthen or synthetic lined basins 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 lagoons or basins are being maintained for possible future use in accordance with the requirements above.

2. Closure Procedures for Other Manure, Litter, or Process Wastewater Storage and Handling Structure

No other manure, litter, or process wastewater storage and handling structure shall be abandoned. Closure of all such structures shall occur as promptly as practicable after the permittee has ceased to operate, or, if the permittee has not ceased to operate, within 12 months after the date on which the use of the structure ceased. To close a manure, litter, or process wastewater storage and handling structure, the permittee shall remove all manure, litter, or process wastewater and dispose of it in accordance with the permittee's NMP, or document its transfer from the permitted facility in accordance with off-site transfer requirements specified in this permit, unless otherwise authorized by the Secretary.

B. Requirements for the Transfer of Manure, Litter, and Process Wastewater to Other Persons

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

1. Maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted operation. Total quantity exported shall be reported in each Annual Report;
2. Record the name and address of the recipient;
3. Provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater; and
4. Retain the records on-site, for a period of five years, and submit the records to the Secretary, upon request.

C. Limitations on Other Discharges

Discharges to waters of the State that are not addressed under this permit remain subject to applicable state and federal law.

PART VI. STANDARD PERMIT CONDITIONS

A. Records Retention

The permittee shall retain records of all monitoring information, copies of all reports required by this permit, a copy of the permittee's authorization under this permit, and records of all data and information used to complete the application for permit coverage for a period of at least five years from the date of the sample, measurement, report, or application. This information shall be submitted to the Secretary upon request. This period shall be extended during the course of any unresolved litigation or enforcement action regarding the discharge of pollutants or when requested by the Secretary at any time.

B. Duty to Comply

The permittee shall comply with all terms and conditions of this permit, including the CAFO's entire site-specific NMP incorporated by the Secretary into this general permit. Any permit noncompliance constitutes a violation of 10 V.S.A. Chapter 47 and the federal Clean Water Act and is grounds for an enforcement action, for permit coverage termination, revocation and reissuance of the authorization for permit coverage, modification of permit coverage, or denial of a permit coverage renewal application.

C. Penalty for Permit Violation

The federal Clean Water Act provides for penalties for permit violations as specified in 40 C.F.R. § 122.41(a).

10 V.S.A. § 1275(a) provides that:

“Any person who violates any provision of this subchapter or who fails, neglects or refuses to obey or comply with any order or the terms of any permit issued in accordance with this subchapter, shall be fined not more than \$25,000.00 or be imprisoned not more than six months, or both. Each violation may be a separate offense and, in the case of a continuing violation, each day's continuance may be deemed a separate offense.”

10 V.S.A. § 8010(c) provides that:

“A penalty of not more than \$42,500.00 may be assessed for each determination of a separate violation. In addition, if the Secretary determines that a violation is continuing the Secretary may assess a penalty of not more than \$17,000.00 for each day the violation continues. The maximum amount of penalty assessed under this subsection shall not exceed \$170,000.00.”

D. Penalty for False Statement or for Falsifying, Tampering with, or Rendering Inaccurate any Monitoring Device or Method

The federal Clean Water Act provides in 40 C.F.R. § 122.41(k) that any person who knowingly 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 non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000.00 per violation, or by imprisonment for not more than six months per violation, or by both.

The federal Clean Water Act provides in 40 C.F.R. § 122.41(j)(5) that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punishable by a fine of not more than \$10,000.00, or by imprisonment for not more than two years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine or not more than \$20,000.00 per day of violation, or by imprisonment of not more than four years, or both.

10 V.S.A. § 1275(b) provides that:

“Any person who knowingly makes any false statement, representation or certification in any

application, record, report, plan, or other document filed or required to be maintained under this subchapter, or by any permit, rule, regulation or order issued under this subchapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this subchapter or by any permit, rule, regulation, or order issued under this subchapter, shall upon conviction, be punished by a fine of not more than \$10,000.00 or by imprisonment for not more than six months, or by both.”

E. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for the 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.

F. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any adverse impact to waters of the State resulting from noncompliance with this permit, including conducting accelerated or additional monitoring as necessary to determine the nature and impact of the non-complying discharge.

G. Noncompliance Notification

In the event the permittee is unable to, or fails to, comply with any of the conditions of this permit due, among other reasons, to:

1. The breakdown or maintenance of waste treatment equipment (biological and physical-chemical systems including all pipes, transfer pumps, compressors, collection ponds or tanks for the segregation of treated or untreated wastes);
2. Accidents caused by human error or negligence; or
3. Other causes such as acts of nature.

The permittee shall notify the Secretary within 24 hours of becoming aware of such condition or by the next business day and shall provide the Secretary with the following information, in writing, within five days:

- a) The cause(s) of non-compliance;
- b) A description of the non-complying discharge including: its impact upon the receiving water and the exact dates and times of the noncompliance;
- c) The anticipated time the condition of non-compliance is expected to continue to or, if such condition has been corrected, the duration of the period of non-compliance;
- d) The steps taken by the permittee to reduce and eliminate the non-complying discharge; and
- e) The steps taken or to be taken by the permittee to reduce, eliminate, and prevent recurrence of the non-compliance.

H. Proper Operation and Maintenance

The permittee shall, at all times, properly operate and maintain all facilities and systems for 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 appropriate quality assurance procedures.

I. Inspection, Monitoring, and Recordkeeping

The permittee shall inspect, monitor, and record the results of such inspection and monitoring in accordance with Table IV.A. and this Subpart.

1. Samples and measurements must be representative of the volume and nature of the monitored discharge.
2. Monitoring must be conducted according to test procedures approved under 40 C.F.R. § 136, unless other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 C.F.R. § 136.5.
3. Records of monitoring information shall include:
 - a) The date, exact place, and time of sampling or measurement;
 - b) The individual(s) who performed the sampling or measurement;
 - c) The date(s) analyses were performed;
 - d) The individual(s) who performed the analyses;
 - e) The analytical techniques or methods used; and
 - f) The results of such analyses.

J. Duty to Provide Information

The permittee shall furnish to the Secretary, within a reasonable time, any information which the Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating an authorization for coverage under this permit or to determine compliance with this permit. The permittee shall also furnish to the Secretary upon request, copies of records required to be kept by this permit.

1. Notification of discharges of manure, litter, or process wastewater as a result of storage, handling, on-site transport, application, or overflows of any process wastewater retention structures:

If for any reason there is a discharge of pollutants to waters of the State, the permittee is required to make immediate oral notification within 24 hours to the Secretary and notify the Secretary in writing within five working days of the discharge from the facility. In addition, the permittee shall keep a copy of the notification submitted to the Secretary together with the other records required by this permit. The discharge notification shall

include the following information:

- a) A description of the discharge and its cause, including a description of the flow path to the receiving waterbody and an estimate of the flow and volume discharged.
- b) The period of noncompliance, including exact dates and times, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent recurrence of the discharge.

2. Monitoring Requirements for All Discharges from Retention Structures

In the event of any overflow or other discharge of pollutants from a manure and/or wastewater storage or retention structure, whether or not authorized by this permit, the following actions shall be taken:

- a) All discharges shall be sampled and analyzed. Samples must, at a minimum, be analyzed for the following parameters: total nitrogen, nitrate nitrogen, ammonia nitrogen, total phosphorus, E. coli, five-day biochemical oxygen demand (BOD5), total suspended solids, pH, and temperature. The discharge must be analyzed in accordance with approved EPA methods for water analysis listed in 40 C.F.R. § 136;
- b) Record an estimate of the volume of the release and the date and time;
- c) Samples shall consist of grab samples collected from the point of overflow or discharge from the waste impoundment or production area. A minimum of one sample shall be collected within 30 minutes or as soon as possible following the detection of the overflow or discharge and the sample(s) of the overflow or discharge must be collected and analyzed in accordance with EPA approved methods for water analysis listed in 40 C.F.R. § 136. The sample(s) collected from the overflow or discharge must be representative of the overflow or discharge;
- d) If conditions are not safe for sampling, the permittee must provide documentation of why samples could not be collected and analyzed. For example, the permittee may be unable to collect samples during dangerous weather conditions (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). However, once dangerous conditions have passed, the permittee shall collect a sample from the retention structure (pond or lagoon) from which the discharge occurred; and
- e) The analytical results of the representative sample(s) taken from the overflow or discharge must be submitted to the Secretary within 30 days of the overflow or discharge.

K. Bypass

The intentional diversion of waste streams from any portion of a treatment facility is prohibited unless allowed by 40 C.F.R. § 122.41(m).

L. Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit limitations in accordance with 40 C.F.R. § 122.41(n).

M. Signatory Requirements

All applications, reports, and information submitted to the Secretary shall be signed and certified:

1. In the case of corporations, by a responsible corporate officer.
2. In the case of a partnership, by a general partner.
3. In the case of a sole proprietorship, by the proprietor.
4. In the case of a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.
5. In the case of limited liability companies (LLCs), by the LLC manager or authorized member.

N. Right of Inspection and Entry

The permittee shall allow the Secretary or his/her authorized representative (including an authorized contractor acting as a representative of the Secretary), upon presentation of credentials to:

1. 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;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

O. Property Rights

Issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights.

P. Federal, State, and Local Laws

Issuance of this permit does not authorize any infringement of federal, state, or local laws or regulations. This permit does not convey authorization to conduct any activity within

wetlands including: clearing, grading, excavation, placement of temporary or permanent erosion and sediment control structures, or any other activity required by this permit. Any such activity within a wetland may require a conditional use determination pursuant 10 V.S.A. § 905(b) and/or a permit pursuant to Section 404 of the federal Clean Water Act or both.

This permit does not authorize any discharge or activity which could adversely affect threatened or endangered species protected under the federal Endangered Species Act, which could constitute the taking of threatened or endangered species pursuant to 10 V.S.A. Chapter 123, or which could jeopardize conservation programs established by the Secretary in accordance with 10 V.S.A. Chapter 123.

Q. Revocation or Modification of Authorization to Discharge

The Secretary may revoke and reissue, modify, suspend, or terminate for cause, in whole or in part, authorization to discharge under this permit in accord with the Vermont Water Pollution Control Permit Regulations Chapter 13, § 13.12 C.6. The filing of a request by a permittee for a modification, revocation and reissuance, or termination of its authorization to discharge under this permit, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

R. Modification of General Permit

After notice and opportunity for public hearing, this permit may be modified in accordance with the Vermont Water Pollution Control Permit Regulations Chapter 13, § 13.12 C.7. The incorporation of the terms of a CAFO's NMP into the terms and conditions of this permit when a CAFO obtains coverage under this general permit is not a cause for modification of this general permit under this Subpart.

S. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under 10 V.S.A. § 1281.

T. Toxic Pollutants

The permittee must comply with effluent standards or prohibitions established under Section 307(a) of the federal Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not been modified to incorporate the requirement.

U. Planned Changes

The permittee must give written notice to the Secretary as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 C.F.R. § 122.29(b);
or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under Subpart VI.T. (“Toxic Substances”).

V. Anticipated Noncompliance

The permittee shall give written advance notice to the Secretary of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

W. Twenty-four Hour Reporting

The permittee shall report any noncompliance which may endanger health or the environment in accordance with 40 CFR § 122.41(l)(6) which states that any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time 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, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

1. The following shall be included as information which must be reported within 24 hours under this paragraph.
 - a) Any unanticipated bypass which exceeds any effluent limitation in the permit.
 - b) Any upset which exceeds any effluent limitation in the permit.
 - c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Secretary in the permit to be reported within 24 hours. (See 40 C.F.R. § 122.44(g))
2. The Secretary may waive the written report on a case-by-case basis for reports under this section if the oral report has been received within 24 hours.

X. Other Information

If the permittee becomes aware that it failed to submit any relevant facts in its application, or submitted incorrect information in its application or other reports, it must promptly submit such facts or information.

Y. Authority

This permit is issued under authority of 10 V.S.A. Chapter 47 and Section 402 of the federal Clean Water Act.

PART VII. DEFINITIONS

AFO means Animal Feeding Operation. A lot or facility (other than an aquatic animal production facility) where the following conditions are met:

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

ANR means the Vermont Agency of Natural Resources.

Barnyard or feedlot means an area, either earthen or improved, where animals are confined by fences, other structures, or topography, are primarily sustained by supplemental feed and where vegetative cover is sparse.

CAFO means concentrated animal feeding operation. For the purposes of this permit, this is an AFO that is defined as a Medium CAFO in 40 C.F.R. § 122.23(b)(6), or that is designated as a CAFO pursuant to 40 C.F.R. § 122.23(c).

Certified Nutrient Management Planner means an individual certified through the completion of the USDA/NRCS nutrient management certification process (or approved equivalent) who creates, reviews, and modifies NMPs.

Conservation Practice means a specific treatment used to address specific natural resources needs and can be structural, vegetative, or land management.

Cropland means land devoted to row crop, perennial production, or pasture production.

Discharge means the “discharge of a pollutant”.

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

Grab sample means a sample that is taken from a wastestream on a one-time basis without consideration of the flow rate of the wastestream and without consideration of time.

General Permit Rules means the *Amendment to the Vermont Water Pollution Control Regulations*, Chapter 13, effective October 7, 1991.

Land application means the application of manure, litter, or process wastewater onto or incorporated into the soil.

Land application area means land under 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.

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

Manure is defined to include manure, litter, bedding, compost, and raw materials or other materials commingled with manure or set aside for land application, other use, or 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:

1. Pollutants are discharged into waters of the State through a man-made ditch, flushing system, or other similar man-made device; or
2. Pollutants are discharged directly into waters of the State 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.

Notice of Intent (NOI) is a form submitted by the owner/operator applying for coverage under this general permit. It requires the applicant to submit the information necessary for adequate program implementation as indicated at 40 CFR § 122.28(b)(2)(ii).

NRCS means United States Department of Agriculture (USDA) Natural Resources Conservation Service.

Nutrient Management Plan means the system by which animal waste generation, storage, and use is handled for the purpose of obtaining optimum forage and crop yields including the related management aspects of fertilizer nutrients, conservation practices, animal mortalities, clean water, chemical handling, waste and soil testing, and record keeping.

NMP means nutrient management plan.

Permittee means a person or business that has received coverage under this general permit.

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 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 lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes feed silos, silage bunkers, and bedding materials. The waste containment area includes settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

Secretary means the Secretary of the Agency of Natural Resources or the Secretary's duly authorized representative.

25-year, 24-hour storm 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 No. 40, "Rainfall Frequency Atlas of the United States", May 1961 or equivalent or State rainfall probability information developed from this source.

Vermont Water Quality Standards means the standards and criteria adopted by the Vermont Water Resources Board, pursuant to 10 V.S.A. Chapter 47, § 1252(e).

Waste for the purposes of this permit includes spoiled feed, manure, milkhouse waste, washwater, leachate, used bedding, carcasses, barnyard runoff, and other dirty water.

Waste Management System means an on-farm waste management program and conservation practices which include a combination of:

1. An adequately sized waste storage facility, field stacking, composting, leachate control system, and milkhouse waste system;
2. Contracts which transfer the ownership of wastes generated at a production area to another party for management in a manner determined by the Secretary; and/or
3. A NMP for all wastes to be applied in compliance with this permit.

Waste storage facility means a facility constructed for the purpose of storing agricultural waste by means including constructing an embankment, excavating a pit or dugout, fabricating an in-ground or above-ground structure, or any combination thereof.

Waters of the State means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the State of Vermont or any portion of it.

APPENDIX A

Terms of the Nutrient Management Plan

Rates of application shall be determined by using one of the following two approaches:

1. **Linear approach.** An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the NMP, in chemical forms determined to be acceptable to the Secretary, 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: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the Secretary for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include 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 NMP accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; or

2. **Narrative rate approach.** An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:
 - a) 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 determined to be acceptable to the Secretary, 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: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with paragraph b. below); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the Secretary for each crop or use identified for each field. In addition, the terms include the methodology by which the NMP accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the NMP, as required by Part IV.A.1 of the permit; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

- b) The terms of the NMP include alternative crops identified in the CAFO's NMP that are not in the planned crop rotation. Where a CAFO includes alternative crops in its NMP, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the NMP must include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the Secretary for each crop. 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 paragraph a) above.
- c) For CAFOs using this approach, the following projections must be included in the NMP submitted to the Secretary, but are not terms of the NMP: 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 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. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the NMP.
- d) CAFOs that use this approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in paragraph 2.a) above before land applying manure, litter, and process wastewater and must rely on the following data:
 - (1) 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 required by paragraph 2.a) above, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the Secretary; and
 - (2) 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.