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## **TITLE 327 WATER POLLUTION CONTROL BOARD**

### **SECOND NOTICE OF COMMENT PERIOD**

#01-51(WPCB)

## **DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING CONCENTRATED ANIMAL FEEDING OPERATIONS**

### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a general National Pollutant Discharge Elimination System permit for concentrated animal feeding operations (CAFOs). The purpose of this rulemaking is to allow IDEM to issue a general NPDES permit for all confined feeding operations that meet the definition of a CAFO. By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

### **HISTORY**

First Notice of Comment Period: March 1, 2001, Indiana Register (24 IR 1976).

**CITATIONS AFFECTED:** 327 IAC 5-4-3; 327 IAC 15-15.

**AUTHORITY:** IC 13-13-5-1; IC 13-14-8-7; IC 13-15-1-2; IC 13-15-2-1; 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 412.

### **SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

Under the Clean Water Act, CAFOs are point sources for pollutant discharges subject to the NPDES permit process. This requirement is also found in federal regulations at 40 CFR 122.23(a). The term "CAFO" is defined in 40 CFR 122. This same language has been adopted in Indiana and is found in the Indiana Administrative Code at 327 IAC 5-4-3 concerning special NPDES programs. Based on a decision from the United States District Court for the Southern District of Indiana, IDEM is required to select one (1) of three (3) options for pursuing NPDES permits for CAFOs in Indiana. IDEM believes that development of a general permit rule is the most time and resource effective means to comply with this court order. In addition, U.S. EPA has published amendments to the federal NPDES regulations for CAFOs, which are being incorporated into this rulemaking.

IDEM has a separate program to regulate confined feeding operations (CFOs). This program is required by statute under IC 13-18-10. However, the requirements of that program do not, in all instances, meet the requirements for a NPDES permit under federal law. IDEM believes the most effective way to address the issue of federal NPDES requirements under the Clean Water Act is in a separate rulemaking that considers all the alternatives available for compliance with those requirements.

IDEM has drafted rule language for a new NPDES general permit for CAFOs at 327 IAC 15-15. IDEM has also amended 327 IAC 5-4-3 to comport with the newly published federal regulations. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

### **SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from March 1, 2001, through April 1, 2001, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received comments from the following parties by the comment period deadline:

Joseph E. Kernan, Lieutenant Governor and Commissioner of Agriculture, (ICARD)

Harry L. Pearson, Indiana Farm Bureau, (IFB)

Terry Fleck, Indiana Pork Producers Association, (IPPA)

Paul Wm. Brennan, Indiana State Poultry Association, Inc., (ISPA)

Bryan Hendrix, Rose Acre Farms, (RAF-BH)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* IDEM worked diligently with U.S. EPA over this 42-month period to satisfy the environmental requirements of a National Pollutant Discharge Elimination System (NPDES) permit. In fact, when reviewing the Indiana confined feeding rule, compared to the environmental requirements of an NPDES permit, Indiana's rule is more environmentally restrictive and protective of the Hoosier environmental landscape. Indiana's rule is functionally equivalent to a federal program and provides a mechanism for enforcement and protection of water quality under the Clean Water Act. (ICARD) (IFB) (IPPA) (ISPA)

*Response:* IDEM has discussed the concept of "functional equivalency" with EPA, and has attempted to make the case that the CFO rule is functionally equivalent per the 1999 U.S. EPA/USDA CAFO strategy. However, in accordance with the above referenced federal court decision, the federal government is concluding that Indiana must have NPDES permits for CAFOs. IDEM believes the general permit process is the most expeditious way to meet the requirements of the court order and pending federal regulations.

*Comment:* With the transition of the federal Administration, it is not prudent to move forward with rulemaking at this time. Animal agriculture

federal policy and position has not been determined and communicated to the state level decision-makers. It is because of these reasons that we discourage pursuing additional rulemaking on concentrated animal feeding operations. Indiana farmers are doing their job of protective water quality in this state. Indiana's animal agriculture rules are enforceable and achieve environmental performance standards; therefore rulemaking is not necessary. (ICARD) (IFB) (ISPA)

*Response:* IDEM believes that with the inception of the new state CFO rules and continued education and outreach with the agricultural community that Indiana's farmers have made significant strides regarding environmental stewardship. However, IDEM is responding to a court order to issue NPDES permits and this rulemaking is the most expeditious way to pursue NPDES permits for CAFOs. IDEM will seek to be as nonduplicative as possible with the existing state rules.

*Comment:* The task force worked diligently to develop this rule to protect Indiana's water resources and to allow Indiana's livestock to remain a viable part of the state economy. We believe the final adopted rule accomplishes these goals. IDEM has kept the Environmental Protection Agency informed of the rule's progress and content. Numerous revisions were incorporated into the rule in the last year to satisfy EPA concerns. We believe the proposed rule exceeds all requirements for CAFOs under the Clean Water Act. (IFB) (IPPA)

*Response:* The state CFO rule does not meet all requirements for a NPDES permit for CAFOs. IDEM will work to assure that, to the extent possible, there are not duplicative requirements under the NPDES general permit rule.

*Comment:* We emphasize that Indiana confined feeding operations operate under a "zero discharge" requirement with no allowances for discharges under wet weather conditions. This is far more restrictive than the NPDES discharge permits issued to industries and municipal wastewater facilities. To propose a new NPDES rule for CAFOs, with a no-discharge provision, does not add environmental protection. Indiana's existing environmental rules do contain provisions to issue NPDES permits to confined feeding operations that have demonstrated an inability to operate without discharging. IDEM is currently requesting NPDES permits from a number of livestock facilities that fit this category. With current authority to issue NPDES permits to CAFOs when circumstances dictate, we do not see a need for additional regulation. (IFB)

*Response:* IDEM is under a court order to issue NPDES permits to all CAFOs within the state. The most apparent interpretation of the federal court decision is that all federally-defined CAFOs require a NPDES permit, regardless of whether there is a documented discharge.

*Comment:* The newly adopted rule applies to a threshold of livestock operations far below the federal guideline. It provides for 5-year renewable permits, extensive on-farm record keeping, continues a no-discharge requirement, emergency response plans, land application requirements, manure management plans, construction guidelines, and much more. Since 1998, IDEM has faithfully pursued a comprehensive inspection program on confined feeding operations, with continuous improvement being noted in locating and correcting management and structural inconsistencies. (IPPA)

*Response:* IDEM agrees with this characterization of the state program and state efforts to protect the environment.

*Comment:* What specific EPA official is calling for another new rule from the state of Indiana? Under what pretext in the newly adopted IDEM CFO rule is EPA driving their insistence upon IDEM for further rule changes? Under what demonstrable insufficiency is EPA calling for more environmental protection that is not covered in the IDEM CFO rule? (IPPA)

*Response:* IDEM is under a court order to issue NPDES permits to all CAFOs in the state.

*Comment:* US EPA is currently undergoing revision to the federal CAFO regulation and effluent limitation guideline. The intent of the federal laws, which have been in place for the past twenty (20) years when real problems were found, has been to regulate when real problems were found in a facility. Indiana has consistently implemented this delegated authority and taken steps, through its confined feeding statute and guidelines and enforcement authority, to protect Indiana waters. To begin an Indiana process to revise rules to meet federal guidelines when those guidelines have not been determined is unnecessary and premature. Given the recent and evolving changes at US EPA, it seems prudent to allow EPA the room to make their decision on what it required and then take steps to modify if necessary. To take action before we know what will be reflective of the new EPA is not sound policy and an efficient use of IDEM's time. (IPPA)

*Response:* As stated above, there is now a court order requiring the issuance of NPDES permits to all CAFOs in the state. IDEM believes that the best way to achieve this is to adopt a general permit rule, thereby obviating the need for each individual CAFO to seek an individual permit. IDEM believes that any new general NPDES permit rule should be consistent with the amended federal CAFO regulations expected to be published in December. IDEM will work to incorporate the federal requirements within this rulemaking to the extent possible.

*Comment:* Current Indiana statute is clear on the steps to follow if and when the issue of a federal NPDES requirement needs to be implemented. Prior to an NPDES permit application, IDEM is to conduct an on-site inspection and determination is then made if a facility should be regulated. The determination is defined to be in the form of pollutants being discharged directly or through another device. To simply imply, as some have suggested, that all CFO's automatically discharge, is legally incorrect and would constitute a violation of our state law. To automatically override state law in this regard is abusive discretion. The foundational premise that because one exists one violates the no discharge policy, is untrue and not scientifically defensible. (IPPA)

*Response:* IDEM has not suggested and does not mean to imply that all CFOs discharge. There is a distinction between a CFO, as defined under Indiana law, and a CAFO, as defined under federal law. Indiana has adopted the federal definition of a CAFO in its regulations and currently has the authority to issue individual NPDES permits to CAFOs within the state. The requirement for an on-site inspection only applies to small operations that are designated as CAFOs due to a finding that the operations are significant contributors of pollution to waters of the state. Other operations, based either on size or on size and discharge are, under both state and federal law, a CAFO, which is a point source under the Clean Water Act.

*Comment:* Rather than pursue the costly process of additional rulemaking it seems apparent that IDEM should implement the tools it already has available. Provisions exist to adequately regulate all confined feeding operations in Indiana. Design and construction standards exist, manure management plans exist, inspection programs exist, record keeping program exist, 5-year permits exist, public comment provisions exist, enforcement authority exists and NPDES provisions exist. Appropriate and fair implementation of current statutes, rules and guidelines and policies is more advisable at the current time until we see where EPA will end up on these evolving issues. Doing anything different is building on shifting sand. (IPPA)

*Response:* IDEM agrees that implementation of the tools that exist is imperative to environmental protection in Indiana. IDEM could use existing

rules to require individual NPDES permits from all CAFOs as defined at 327 IAC 5-4-3. However, it is IDEM's belief that pursuing a general permit rule would be less burdensome for both the agency and those regulated by it. IDEM intends to use the tools developed through many years of hard work with the agricultural community and the public to assure, to the extent possible, that there is not a duplication of requirements and effort between the state CFO rule and the NPDES general permit rule.

*Comment:* Why is (IDEM) continuing to work on CAFO's? Are we having catastrophes happening in the farming sector that we are not aware of? Today we had an inspector to show up at a site where we were spreading eggshells on the field. He wasted his time and ours. Is this a good way of using our taxpayers money? Now you want to start on NPDES rule making for CAFOs. It is very difficult in this day and age to make money farming. This will only complicate things worse. Why do we need this rule? Is it going to clean the environment up or is it just going to complicate things and make hard feelings between landowners. I want you to know that we already do a good job on each of our farms. That is why we are still in business. Go after the ones that are the problem (City wastewater, etc.) The farming sector has almost died here in Indiana and this will only make it worse. (RAF-BH)

*Response:* IDEM is continuing to pursue a NPDES general permit rule to satisfy a court order to issue NPDES permits to all CAFOs in the state. Inspection of regulated entities is a vital compliance tool that aids both the agency and the persons being inspected in assuring compliance. IDEM has worked closely with the agricultural community in development of the state CFO rules, which were required by statute, and intends to do so in the development of this rule.

### REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#01-51(WPCB)[CAFO-NPDES]

Marjorie Samuel

Rules, Outreach and Planning Section

Office of Land Quality

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the eleventh floor reception desk, Office of Land Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at (317) 232-3403, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by call the Rules, Planning and Outreach Section at (317) 232-7995 or (317) 232-3593.

### COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by March 3, 2003.

Additional information regarding this action may be obtained from Lynn West, Rules, Outreach, and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

### DRAFT RULE

SECTION 1. 327 IAC 5-4-3 IS AMENDED TO READ AS FOLLOWS:

#### **327 IAC 5-4-3 Concentrated animal feeding operations**

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-4

Sec. 3. (a) Concentrated animal feeding operations are point sources ~~subject to the that require NPDES permit program permits for discharges or potential discharges. Once an operation is defined as a CAFO under this section, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal. Except as provided in subsection (d), all CAFO owners or operators must seek coverage under either an individual NPDES permit or a general NPDES permit under 327 IAC 15-15.~~

(b) The following definitions apply throughout this rule:

(1) "Animal confinement area" means the areas of the facility where animals are housed. It includes, but is not limited to, the following areas:

(A) Open lots.

(B) Housed lots.

(C) Feedlots.

(D) Confinement houses.

(E) Stall barns.

(F) Free stall barns.

(G) Milk rooms.

(H) Milking center.

- (I) Cowyards.
- (J) Barnyards.
- (K) Medication pens.
- (L) Walkers.
- (M) Animal walkways.
- (N) Stables.

(1) (2) “Animal feeding operation” or “AFO” means the following:

(A) A lot or facility, **other than an aquatic animal production facility**, where the following conditions are met:

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

(B) Two (2) or more animal feeding operations under common ownership are considered, for the purposes of this article, ~~(327 IAC 5)~~, to be a single animal feeding operation if **they the operations** adjoin each other or if **they the operations** use a common area or system for the disposal of wastes.

(2) (3) “Concentrated animal feeding operation” or “CAFO” means an **animal feeding operation which meets the criteria set forth in clause (A) or (B) or which is designated AFO that is one (1) of the following:**

(A) A large CAFO.

(B) A medium CAFO.

(C) Designated as a CAFO by the commissioner under subsection (c).

(A) More than the numbers of animals specified in any of the following categories are confined:

- (i) one thousand (1,000) slaughter and feeder cattle;
- (ii) seven hundred (700) mature dairy cattle (whether milked or dry cows);
- (iii) two thousand five hundred (2,500) swine each weighing over 25 kilograms (approximately 55 pounds);
- (iv) five hundred (500) horses;
- (v) ten thousand (10,000) sheep or lambs;
- (vi) fifty-five thousand (55,000) turkeys;
- (vii) one hundred thousand (100,000) laying hens or broilers (if the facility has continuous overflow watering);
- (viii) thirty thousand (30,000) laying hens or broilers (if the facility has a liquid manure system);
- (ix) five thousand (5,000) ducks; or
- (x) one thousand (1,000) animal units; or

(B)(i) Either pollutants are discharged from the facility into waters of the state through a man-made ditch, flushing system; or other similar man-made device; or pollutants are discharged directly from the facility 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; provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event; and

(ii) More than the following numbers of animals are confined in any of the following categories:

- (AA) three hundred (300) slaughter or feeder cattle;
- (BB) two hundred (200) mature dairy cattle (whether milked or dry cows);
- (CC) seven hundred fifty (750) swine; each weighing over 25 kilograms;
- (DD) one hundred fifty (150) horses;
- (EE) three thousand (3,000) sheep or lamb;
- (FF) sixteen thousand five hundred (16,500) turkeys;
- (GG) thirty thousand (30,000) laying hens or broilers (if the facility has continuous overflow watering);
- (HH) nine thousand (9,000) laying hens or broilers (if the facility has a liquid manure handling system);
- (H) one thousand five hundred (1,500) ducks; or
- (J) three hundred (300) animal units.

(3) “Animal unit” means a unit of measurement for any animal feeding operation such that the total animal units is calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0; plus the number of mature dairy cattle multiplied by 1.4; plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4; plus the number of sheep multiplied by 0.1; plus the number of horses multiplied by 2.0.

Two (2) or more AFOs under common ownership that 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 disposal of wastes.

(4) “Land application area” means land under the control of an AFO owner or operator, whether the land is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.

(5) “Large concentrated animal feeding operation” or “large CAFO” means an AFO that stables or confines as many as or more than the number specified in any of the following categories:

(A) Seven hundred (700) mature dairy cows, whether milked or dry.

(B) One thousand (1,000) veal calves.

(C) One thousand (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.

- (D) Two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more.
- (E) Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds.
- (F) Five hundred (500) horses.
- (G) Ten thousand (10,000) sheep or lambs.
- (H) Fifty-five thousand (55,000) turkeys.
- (I) Thirty thousand (30,000) hens or broilers, if the AFO uses a liquid manure handling system.
- (J) One hundred twenty-five thousand (125,000) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.
- (K) Eighty-two thousand (82,000) laying hens, if the AFO uses other than a liquid manure handling system.
- (L) Thirty thousand (30,000) ducks, if the AFO uses other than a liquid manure handling system.
- (M) Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system.
- (6) "Manure" means animal waste, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.
- (7) "Manure storage area" means any area where manure is kept. It includes, but is not limited to, the following areas:
  - (A) Lagoons.
  - (B) Run-off ponds.
  - (C) Storage sheds.
  - (D) Stockpiles.
  - (E) Under house or pit storages.
  - (F) Liquid impoundments.
  - (G) Static piles.
  - (H) Composting piles.
- (4) (8) "Manmade" means constructed by man and used for the purpose of transporting wastes.
- (9) "Medium concentrated animal feeding operation" or "medium CAFO" means the following:
  - (A) Any AFO with the type and number of animals that fall within any of the following ranges and has been defined or designated as a CAFO:
    - (i) Two hundred (200) to six hundred ninety-nine (699) mature dairy cattle, whether milked or dry.
    - (ii) Three hundred (300) to nine hundred ninety-nine (999) veal calves.
    - (iii) Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs.
    - (iv) Seven hundred fifty (750) to two thousand four hundred ninety-nine (2,499) swine each weighing fifty-five (55) pounds or more.
    - (v) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) swine each weighing less than fifty-five (55) pounds.
    - (vi) One hundred fifty (150) to four hundred ninety-nine (499) horses.
    - (vii) Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) sheep or lambs.
    - (viii) Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys.
    - (ix) Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers, if the AFO uses a liquid manure handling system.
    - (x) Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system.
    - (xi) Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens, if the AFO uses other than a liquid manure handling system.
    - (xii) Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks, if the AFO uses other than a liquid manure handling system.
    - (xiii) One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks, if the AFO uses a liquid manure handling system.
  - (B) Either one (1) of the following conditions are met:
    - (i) Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device.
    - (ii) Pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
- (10) "No potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the state under any circumstance or climatic condition.
- (11) "Process wastewater" means the following:
  - (A) Water directly or indirectly used in the operation of the AFO for any or all of the following:
    - (i) Spillage or overflow from animal or poultry watering systems.
    - (ii) Washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities.
    - (iii) Direct contact swimming, washing, or spray cooling of animals.
    - (iv) Dust control.
  - (B) Process wastewater includes any water that comes into contact with any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs, or bedding.
- (12) "Production area" means that part of an AFO that includes the following:
  - (A) The animal confinement areas.

- (B) The manure storage areas.
- (C) The raw materials storage areas.
- (D) The waste containment areas.
- (E) Egg washing or processing facility.
- (F) Any area used in the storage, handling, treatment, or disposal of mortalities.
- (13) "Raw materials storage area" includes, but is not limited to, the following:
  - (A) Feed silos.
  - (B) Silage bunkers.
  - (C) Bedding materials.
- (14) "Small concentrated animal feeding operation" or "small CAFO" means an AFO that is designated as a CAFO and is not a medium CAFO.
- (15) "Waste containment area" means an area designed to contain manure, litter or process wastewater and includes, but is not limited to, the following:
  - (A) Settling basins.
  - (B) Areas within berms and diversions that separate uncontaminated storm water.
- (c) Case-by-case designation of concentrated animal feeding operations **requirements are as follows:**
  - (1) Notwithstanding any other provision of this section, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of pollution to the waters of the state. In making this designation, the commissioner shall consider the following factors:
    - (A) The size of the animal feeding operation and the amount of wastes reaching waters of the state.
    - (B) The location of the animal feeding operation relative to waters of the state.
    - (C) The means of conveyance of animal wastes and process wastewaters into waters of the state.
    - (D) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes, **manure**, and process wastewaters into waters of the state. ~~and~~
    - (E) Other factors relevant to the significance of the pollution problem under consideration.
  - (2) In no case shall a permit application be required from a concentrated animal feeding operation designated under this subsection until there has been an on-site inspection of the operation and a determination that the operation should be regulated under the permit program.
  - (3) No animal feeding operation with less than the numbers of animals set forth in subsection ~~(b)~~ **(b)(8)** shall be designated as a concentrated animal feeding operation unless:
    - (A) pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
    - (B) pollutants are discharged directly into waters of the state ~~which that~~ originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
- (d) **An owner or operator of a large CAFO does not need to seek coverage under this rule or 327 IAC 15-15 if the owner or operator has received a notification from the commissioner of a determination that the CAFO has no potential to discharge in accordance with 327 IAC 15-15-10.** *(Water Pollution Control Board; 327 IAC 5-4-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 642)*

SECTION 2. 327 IAC 15-15 IS ADDED TO READ AS FOLLOWS:

#### **Rule 15. Concentrated Animal Feeding Operations**

##### **327 IAC 15-15-1 Purpose**

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1  
 Affected: IC 13-18-10

**Sec. 1. The purpose of this rule is to establish an NPDES general permit for CAFOs. In addition to the requirements of this article for all general permits, this rule establishes the requirements for CAFOs in Indiana.** *(Water Pollution Control Board; 327 IAC 15-15-1)*

##### **327 IAC 15-15-2 Definitions**

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1  
 Affected: IC 13-11-2; IC 13-18-10

**Sec. 2. The definitions contained in IC 13-11-2, 327 IAC 5-1.5, 327 IAC 5-4-3, and 327 IAC 15-1-2 apply throughout this rule. In addition to those definitions, the following definitions apply throughout this rule:**

- (1) "Manure management plan" or "MMP" means the plan required under 327 IAC 16 for the proper handling, storage and disposal of manure, litter, and process wastewater.
- (2) "NRCS 590 standard" means the Indiana Natural Resources Conservation Service (NRCS) Nutrient Management Conservation Practice Standard, Code 590 for Phosphorus, July 2001.
- (3) "No potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the state under any circumstance or climatic condition.

*(Water Pollution Control Board; 327 IAC 15-15-2)*

### **327 IAC 15-15-3 Applicability**

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1  
Affected: IC 13-18-10; IC 13-30-3

Sec. 3. (a) This rule applies to all CAFOs or AFOs designated as CAFOs under 327 IAC 5-4-3(c) located within the permit boundary set forth in section 4 of this rule. All CAFO owners or operators must seek coverage under this rule or through an individual NPDES permit, except as provided in subsection (d).

(b) Any owner or operator covered by this rule can request to be excluded from coverage under this general permit rule by applying for and obtaining an individual NPDES permit.

(c) A person excluded from the general permit rule solely because the person has a valid existing individual NPDES permit may request coverage under the general permit rule and may request revocation of the existing individual NPDES permit pursuant to 327 IAC 15-2-3.

(d) The discharge of manure, litter, or process wastewater to waters of the state from a CAFO as a result of land application of the manure, litter, or process wastewater to land areas under its control is a discharge from the CAFO subject to NPDES permit requirements. A CAFO with a valid existing NPDES permit is not subject to enforcement action under IC 13-30-3 if the material is applied in accordance with the land application standards of this rule and 327 IAC 16-10. (*Water Pollution Control Board; 327 IAC 15-15-3*)

### **327 IAC 15-15-4 General permit rule boundary**

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1  
Affected: IC 13-18-10

Sec. 4. All CAFOs, or AFOs designated as CAFOs under 327 IAC 5-4-3(c), within the boundaries of the state are regulated by this rule. (*Water Pollution Control Board; 327 IAC 15-15-4*)

### **327 IAC 15-15-5 Notice of intent letter requirements**

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1  
Affected: IC 13-18-10

Sec. 5. (a) The owner or operator of a CAFO shall submit a notice of intent (NOI) letter, on a form supplied by the department, to the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, IN 46206-6015, Attention: Permits Section.

(b) The NOI letter shall include the following:

- (1) Name and mailing address of the owner and operator.
- (2) Facility name, address, and contact person.
- (3) Physical location of the facility (latitude and longitude of the entrance to the production area).
- (4) Type and number of animals at the facility.
- (5) Type of containment and storage and total capacity for manure, litter, and process wastewater storage.
- (6) Total number of acres under control of the applicant available for land application.
- (7) Estimated amount of manure, litter, and process wastewater generated per year (tons/gallons).
- (8) Estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons).
- (9) Receiving stream information.
- (10) CFO farm ID number provided on state CFO approval under 327 IAC 16.
- (11) A topographic map of the facility.

(c) The NOI letter must be signed by:

- (1) the owner or operator of the facility for which the NOI is submitted;
- (2) a person described under 327 IAC 15-4-3(g); or
- (3) the person who signed the state CFO approval application.

(d) The commissioner may also require publication of a statement in a newspaper of largest circulation in the area of the facility indicating that the facility intends to be covered by the NPDES general permit.

(e) Following submittal of the NOI letter to IDEM, IDEM shall do the following:

- (1) Review the NOI for applicability under this rule.
- (2) List the facility, the NPDES general permit tracking number, and the information contained in this notice in a monthly publication to be distributed by IDEM to all persons who have asked to receive NPDES general permit rule notification. This publication shall identify all facilities that met the NOI and newspaper publication requirements within the preceding month.
- (3) Issue an approval letter to the facility indicating that the facility is covered under this NPDES general permit.

(*Water Pollution Control Board; 327 IAC 15-15-5*)

### **327 IAC 15-15-6 Notice of intent submittal deadline; additional information**

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1  
Affected: IC 13-18-10

Sec. 6. The owner or operator of any existing facility requesting coverage under this rule shall submit a NOI letter within ninety (90) days of the effective date of this rule. Any person proposing a new CAFO facility within the permit boundary shall submit a NOI letter at least one hundred eighty (180) days before the date the facility is populated with animals. (*Water Pollution Control Board; 327 IAC 15-15-6*)

### **327 IAC 15-15-7 General conditions**

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1  
Affected: IC 13-18-10

Sec. 7. (a) In addition to the conditions set forth in this rule, the conditions for a NPDES general permit under 327 IAC 15-1 through 327 IC 15-4 apply to this rule.

(b) The permittee must comply with all requirements under 327 IAC 16 and must maintain the requisite manure management plan (MMP) required under 327 IAC 16-7-11. (*Water Pollution Control Board; 327 IAC 15-15-7*)

### **327 IAC 15-15-8 Specific permit conditions**

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1  
Affected: IC 13-18-10

Sec. 8. In addition to developing and maintaining an MMP, as required under 327 IAC 16-7-11, the permittee must do the following:

- (1) Amend the MMP prior to any change in design, construction, operation, or maintenance that has a significant effect on the potential for discharge of pollutants into waters of the state.
- (2) Comply with NRCS 590 Standard\* by December 31, 2006.
- (3) Inspect all waste management systems for compliance with this rule at least once every month and keep complete self-monitoring records for each inspection in the operating record.
- (4) Evaluation of the adequacy, stability, and operation of the manure handling and storage facilities must be included in self-inspection reports.
- (5) Develop a preventative maintenance plan to be kept with the operating record to include the following:
  - (A) Identification of storm water management devices, systems, and equipment. Such equipment includes, but is not limited to, the following:
    - (i) Drainage inlets.
    - (ii) Roof gutters.
    - (iii) Drainage swales located within the boundary of the production and manure storage areas.
  - (B) A schedule of inspections and tests of the pollution prevention equipment.
- (6) Engage in good housekeeping practices and train employees in good housekeeping practices.
- (7) Maintain an operating record in accordance with 327 IAC 16-9-5.
- (8) Submit an annual report to the commissioner with the following information:
  - (A) Number and type of animals, whether in open confinement or housed under roof.
  - (B) Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous twelve (12) months.
  - (C) Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous twelve (12) months.
  - (D) Total number of acres for land application covered by MMP required by this rule.
  - (E) Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous twelve (12) months.
  - (F) Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous twelve (12) months, including the date, time, and approximate volume for each discharge.
  - (G) A statement indicating if the current version of the CAFO's MMP was developed or approved by a certified nutrient management planner.

\*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Land Quality, Indiana Government Center-North, Eleventh Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Water Pollution Control Board; 327 IAC 15-15-8*)

### **327 IAC 15-15-9 Inspection and enforcement**

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1  
Affected: IC 13-18-10; IC 13-30

Sec. 9. (a) The permittee shall allow the commissioner or an authorized representative, upon presentation of credentials, to enter upon



the premises where a regulated facility or activity is located, have access to and copy any records that must be kept under the conditions of this rule, in accordance with 327 IAC 15-4-1(l).

(b) The conditions of this rule are subject to enforcement pursuant to 327 IAC 15-4-1 and IC 13-30. (*Water Pollution Control Board; 327 IAC 15-15-9*)

### **327 IAC 15-15-10 No potential to discharge determination**

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 10. (a) The commissioner, upon request, may make a case-specific determination that a large CAFO has no potential to discharge pollutants to waters of the state. When making such a determination, the commissioner shall consider the following:

- (1) The potential for discharges from the production area.
- (2) The potential for discharges from any land application area.
- (3) Any record of prior discharges by the CAFO.

(b) The commissioner shall not determine the CAFO to have no potential to discharge pollutants if the CAFO has had a discharge within the five (5) years prior to the date of the request under this section.

(c) To request a determination of no potential to discharge, the owner or operator shall submit any information that would support such a determination, including all NOI letter information required under section 5 of this rule. The commissioner may require additional information to supplement the request and may gather information through an on-site inspection of the CAFO. The information is to be submitted to the commissioner by the date required for submission of a NOI or permit application.

(d) Before making a final decision to grant a no potential to discharge determination, the commissioner shall issue a public notice of receipt of the request. The notice must be accompanied by a fact sheet, which shall include the following:

- (1) A brief description of the type of facility or activity requesting the determination.
- (2) A brief summary of the factual basis, upon which the request was based, for granting the determination.
- (3) A description of the procedures for reaching a final decision on the determination.

(e) The commissioner must notify a CAFO of the final determination within ninety (90) days of receiving the request. If the commissioner denies the no potential for discharge determination, the owner or operator must seek coverage under a permit within thirty (30) days of the denial.

(f) Any unpermitted CAFO that discharges pollutants into waters of the state is in violation of the Clean Water Act even if it has received a no potential to discharge determination from the commissioner.

(g) Any CAFO that has received a determination under this section but that anticipates changes in circumstances that could create the potential for a discharge shall contact the commissioner and apply for and obtain permit authorization prior to the change of circumstances.

(h) The commissioner retains the authority to require NPDES permit coverage for a CAFO that has received a determination under this section if circumstances at the facility change, new information becomes available, or there is reason to believe that the CAFO has a potential to discharge. (*Water Pollution Control Board; 327 IAC 15-15-10*)

### **327 IAC 15-15-11 Duration and renewal of coverage**

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 11. (a) Coverage under this rule is granted by the commissioner for a period of five (5) years from the date coverage commences.

(b) Coverage commences on the date that the applicant receives a letter of approval from the department.

(c) To obtain renewal of coverage under this general permit rule, the information required under section 5 of this rule shall be submitted to the commissioner no later than forty-five (45) days prior to the expiration of coverage under this rule unless the commissioner determines that a later date is acceptable. A CFO approval renewal application under 327 IAC 16-7-4 may serve as the NOI for purposes of renewal of the general permit as long as all information required in the NOI under section 5 of this rule is included. If the NOI information and the CFO approval renewal application are submitted together, the general permit and the CFO approval terms shall run concurrently.

(d) If a CAFO is required to submit an application for an individual NPDES permit, the general permit terminates when:

- (1) the owner or operator fails to submit the permit application required under section 5 of this rule; or
- (2) the individual permit is issued or denied by the commissioner.

(*Water Pollution Control Board; 327 IAC 15-15-11*)

### **327 IAC 15-15-12 Effluent limitations**

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

**Sec. 12. (a) CAFOs subject to this rule are required to meet the effluent limitations contained in 40 CFR 412\*.**

**(b) Any discharges under this rule are required to meet water quality standards.**

*\*This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Avenue NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Land Quality, Indiana Government Center-North, Eleventh Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204. (Water Pollution Control Board; 327 IAC 15-15-12)*

#### ***Notice of First Meeting/Hearing***

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on April 9, 2003 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on new rules of the board at 327 IAC 15-15.*

*The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing.*

*Additional information regarding this action may be obtained from Lynn West, Rules, Outreach, and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).*

*Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:*

*Attn: ADA Coordinator*

*Indiana Department of Environmental Management*

*100 North Senate Avenue*

*P.O. Box 6015*

*Indianapolis, Indiana 46206-6015*

*or call (317) 233-0855. TDD: (317) 233-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.*

*Copies of these rules are now on file at the Office of Land Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor West and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*