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

### **Proposed Rule LSA Document #01-51**

#### **DIGEST**

Amends 327 IAC 5-4-3 and adds 327 IAC 15-15. Under the Clean Water Act, CAFOs are point sources subject to the National Pollutant Discharge Elimination System (NPDES) permit process. This requirement is found in federal regulations at 40 CFR 122.23(a). The term "CAFO" is defined in 40 CFR 122. This 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, the Indiana Department of Environmental Management (IDEM) is required to select one of three 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. Further, amendments to the federal rules have occurred that require IDEM to update its rules. IDEM has a separate program to regulate confined feeding operations (CFOs). This program is required 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 of the Clean Water Act is in a separate rulemaking that considers all the alternatives available for compliance with the federal requirements. IDEM has amended rule language at 327 IAC 5-4-3 and drafted new rule language for a NPDES general permit for CAFOs at 327 IAC 15-15. Effective 30 days after filing with the secretary of state.

#### **HISTORY**

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

Second Notice of Comment Period and Notice of First Hearing: February 1, 2003 (26 IR 1737).

First Hearing: April 9, 2003.

Change in Hearing Notice: May 1, 2003.

First Hearing: May 8, 2003.

#### **REQUEST FOR PUBLIC COMMENTS**

This proposed (preliminarily adopted ) rule is substantially different from the draft rule published on February 1, 2003, at 26 IR 1737. The Indiana Department of Environmental Management (IDEM) is requesting comment of the entire proposed (preliminarily adopted) rule.

The proposed rule contains numerous changes from the draft that make the proposed rule so substantively different from the draft rule that public comment on the entire proposed rule is advisable. This notice requests the submission of comments on the entire proposed rule, including suggestion for specific amendments. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6. Mailed comments should be addressed to:

#01-51 (Development of amendments to rule concerning concentrated animal feeding operations)

Marjorie Samuel

Rules, Outreach, and Planning Section

Office of Land Quality

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, IN 46206-6015

Hand-delivered comments will be accepted by the receptionist on duty at the west desk on the 11<sup>th</sup> floor of the Indiana Government Center-North. Comments may also be submitted by facsimile to (317) 232-3403, Monday through Friday between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling Marjorie Samuel at (317) 232-7995.

#### **COMMENT PERIOD DEADLINE**

Comments must be postmarked, hand-delivered, or faxed by August 22, 2003.

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

The Indiana Department of Environmental Management (IDEM) requested public comment from February 1, 2003, through March 3, 2003, on IDEM's draft rule language. IDEM received comments from the following parties:

Hoosier Environmental Council, (HEC)

Chad G. Frahm, Indiana Farm Bureau, (IFB)

Terry Fleck, Indiana Pork Advocacy Coalition, (INPAC)

Sierra Club, (SC)

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

*Comment:* We do not support general permits for confined feeding operations. General permits do not allow for public notice and comment on this issue that has attracted so much public attention and controversy over a period of years. (HEC)

*Response:* IDEM believes that compliance with the general permit rule will ensure appropriate water quality protection. The general permit rule provides for a determination that an individual permit be required and the public may request that the department process an individual permit.

*Comment:* Confined feeding operations should be subject to individual permits. The state has numerous waterbodies that are affected by E. coli contamination, nitrogen and phosphorous. Manure storage and land application of manure have the potential to contribute to these water quality problems. They should be regulated in a manner similar to other point source dischargers. (HEC)

*Response:* The standards that a CAFO must follow do not significantly differ under a general permit from that which would be required under an individual permit. The major difference between general permit and individual permits would be the type and amount of public participation and the necessity for site-specific conditions for a given operation to address unique problems. The general permit rule retains the authority of the department to require individual permits in situations in which broad public interest exists and/or there are unique issues to address that would not be satisfactorily dealt with through compliance with the general permit rule.

*Comment:* For waters that are already impaired, the provision of a general permit would allow new sources to exacerbate that impairment with no specific effluent limits. This is not consistent with the state's anti-degradation provisions. (HEC)(SC)

*Response:* The specific effluent limit for a CAFO is zero. CAFOs are not allowed to discharge.

*Comment:* IAC 5-4-3 (b) 3 We do not understand why the proposed rule contains an exemption for aquatic animals. They also have the potential to exacerbate water pollution in waters that are already impaired, in contrast with State anti-degradation provisions. (HEC)

*Response:* Aquatic animal operations are not exempt from permitting. Aquatic animals are regulated under 327 IAC 5-4-5. The federal regulations for aquatic animal operations have not been amended, therefore no changes are being suggested in this rulemaking.

*Comment:* (4) Land application provisions of the rule should not be limited to land under the control of the confined feeding owner or operator. (HEC)

*Response:* IDEM agrees and has amended the rule language to clarify that the owner or operator who land applies on land not under his control must meet specific setback requirements in cases where the owner or operator of the CAFO does not have control over the use of other conservation practices such as a filter strip.

*Comment:* (7) Should say "man made conveyance". (HEC)

*Response:* The language in the definition is, verbatim, federal language.

*Comment:* (8)(13)(11) Should say "Pollutants are discharged directly to waters of the state." The provision that this provision only applies to waters "that originate outside of and" ... ignores the fact that many waters of the state originate on private property. These headwater streams should have equal protection. (HEC)

*Response:* The language in the definition is, verbatim, federal language.

*Comment:* 327 IAC 15-15-5(b)(5) - (b)(8) Notice of Intent Letter Requirements. IFB recommends that requirements under (b)(5) through (b)(8) be deleted. This information was not in the previous draft rule and is not required under the federal NPDES statute or rule. (IFB)

*Response:* IDEM has substantially amended the section on Notice of Intent requirements. The language as it is currently drafted, reflects the requirements found in the amended federal rules.

*Comment:* 327 IAC 15-15-5(b)(9) Receiving Stream Information. Because CAFOs are not allowed to discharge under an NPDES permit like other industries, there are no streams that will be receiving any discharge from a CAFO. IFB recommends that this requirement be changed to "Location of nearest potential receiving stream." (IFB)

*Response:* IDEM has amended this language based on discussions with interested parties and EPA and has removed this specific requirement. The amended federal rules no longer require such information for NOIs from CAFOs.

*Comment:* 327 IAC 15-15-8 “Specific Permit Conditions”. IFB strongly urges IDEM to produce citations from federal statute or federal rule that requires each of the conditions in section 8. IFB recommends that conditions (1) through (6) and Condition (8) be deleted and only Condition (7) be required. If IDEM chooses not to delete these conditions, IFB submits the following comments in regard to each condition listed under this section.

- a. Condition (1) is too broad and must be better defined. Does IDEM intend for the phrase “potential for discharge” to be identical to the federal definition in the new EPA CAFO/NPDES rule? Also, IFB recommends that the phrase “waters of the state” be changed to “waters of the United States.”
- b. Condition (2) should also allow for maximum flexibility as new standards are developed instead of specifically stating the FOTG 590 Standard.
- c. For Condition (3), IFB recommends the length of time to keep such records should be no more than three (3) years.
- d. In Condition (4), are the “self-inspection reports” the same as the self-monitoring records?
- e. Conditions (5) and (6) have many faults and IFB recommends that the entire subsection be deleted. IFB requests that specific federal statute or rule citations be provided if any part of this condition is required by federal law or regulation. The ambiguous phrase “good housekeeping practices” in Condition (6) is not defined, vague and not relevant to the regulation of discharges from a point source.
- f. Condition (8). If the department’s intent is to make this information along with the state MMP be equivalent to a Nutrient Management Plan as required by the new federal CAFO rule, then that should be stated in this rule. (IFB)

*Response:* IDEM has made a number of changes to the section dealing with specific permit conditions. Many of the deletions requested in this comment have already occurred. IDEM is open to a discussion as to what type of standards should be allowed, keeping in mind the need for flexibility. However, each affected party must understand what is required of him or her, therefore it is important that the rule contain specific standards that allow people to understand the regulatory expectations of the program.

*Comment:* We support the elimination of a dual permitting structure for CAFOs brought on by the Save the Valley decision. We will continue to support legislative and administrative efforts to reduce this burden on Indiana’s livestock industry. (IFB)

*Response:* IDEM agrees that a streamlined system would be beneficial for the regulated community as well as the agency. However, IDEM continues to support the need for construction approval, as required under existing state law (as of April 10, 2003) and current Water Board CFO regulations.

*Comment:* INPAC notes that given extremely compressed time frame for the general permit rule by virtue of the federal court order, some, if not many, of these issues may need to be re-addressed as we receive guidance from the federal Environmental Protection Agency (EPA). We continue to believe it necessary to fully review the new EPA rule, including EPA guidance, prior to adopting this state rule. (INPAC)

*Response:* IDEM is aware of the very short time-frame within which action must occur. However, IDEM remains committed to crafting a rule that will be approvable by EPA and will comport with federal law. IDEM continues to work closely with EPA during this rulemaking process and will not propose a final rule without continued discussions with EPA and all interested parties.

*Comment:* We also believe that this general permit rule must not exceed the requirements released by EPA without adequate notice and full review and discussion by the Environmental Quality Service Council (EQSC). If IDEM believes there is cause to impose regulations more stringent than the federal rule, they should identify these proposals, provide justification to the environmental circumstance warranting the change and explain how the federal law is inadequate. There should also be a written notice to EQSC as to the financial impact and expected environmental benefit of the proposed restrictions that exceed the federal EPA rule. (INPAC)

*Response:* There are a number of similar proposals that apply to the rulemaking process in general that are currently being debated in the 2003 Indiana general assembly. Should any such changes to the process be signed into law, IDEM will comply with all requirements for providing information, fiscal or otherwise, to the EQSC or whatever is required under law. IDEM’s current draft rule is only, other than minor provisions more stringent than federal law as it relates to a construction review. That particular requirement is a state law requirement under existing IC 13-18-10.

*Comment:* 327 IAC 5-4-3 Definitions. We believe under Section 3b(4) that land application area must contain a provision for land application agreements. Oftentimes, a pork operation will have an agreement with an owner which is not construed to be owned, rented or leased. Under Section 3b(6), manure storage area, we believe composting piles to mean manure composting piles and not mortality composting piles. This may be further clarified in federal EPA guidance, however its listing in the manure storage area would signify this is what is intended. Section 3b(8)(i) and (ii) refer to waters of the state. To keep within the federal rule guidelines, this should say waters of the US, if indeed there is any distinction between US and state waters. (INPAC)

*Response:* Regarding the access agreement, the definition has been changed to include access agreements. In the definition of “manure storage area”, the reference to composting is a reference to manure composting, not mortality composting. Indiana is authorized to issue permits to sources who discharge to waters of the state. Because there is, indeed, a difference between the definition of “waters of the US” and “waters” as defined for state environmental law, limiting the reference to waters of the United States incorrectly characterizes and limits the waters into which a NPDES discharge in the state may occur.

*Comment:* 15-15-2 Definitions. In Section 2(1) we are concerned about the confusion that will be created by using a reference to the manure management plan (MMP) under 327 IAC 16. As we do not fully know what EPA will require to meet their Nutrient Management Plan (NMP) standard, this reference should be citing the federal NMP and not the state MMP. The exception would be the placement of a statement that MMP meets the federal standard of the NMP. If the MMP does not or will not, this subsection should be stricken. Under this general NPDES permit rule, the operator should be forced to do two management plans, one to satisfy IDEM (the MMP) and the other to satisfy EPA (the NMP). We should not have duplicative requirements. (INPAC)

*Response:* IDEM agrees that confusion over the 2 terms could occur. To clarify the requirements, language has been added at 15-15-4(b) providing that compliance with sections 9 and 10 of the rule constitutes compliance with the requirements related to a NMP and use of BMPs, as required under the amended effluent guidelines found at 40 CFR 412.

*Comment:* We are also concerned about the wholesale adoption of the FOTG 590 Standard on phosphorus and other technical effects without further review and definition of what is required by EPA in their December 15th rule. As new EPA standards are developed, it would be wise to build in flexibility rather than be tied to one set named standard. (INPAC)

*Response:* The reference to the 590 standard was included at the request of EPA. Language has been added to build in flexibility to allow a demonstration that an alternative method will satisfy the intent of the 590 standards and be as environmentally protective. IDEM also intends to work with U.S. EPA and others as the rule progresses to address concerns by EPA staff that the Indiana NRCS 590 Standards need revision to include more ascertainable measures of success.

*Comment:* Applicability. In Section 3(dc) there is a reference made to the land application standards of 327 IAC 16-10. The cross-referencing to 327 IAC 16-10 does not fit with the NPDES general rule format. If the intent is to have land application standards applicable to NPDES general permit holders, they should be included in the general permit rule. This will eliminate confusion between the two very different processes (federal and state). These references to the state CFO rule should be stricken throughout this entire document. If the information in the state CFO rule is relevant to federal CAFOs to be consistent, the information should be placed in this rule. (INPAC)

*Response:* It is a standard practice to cross-reference rule citations, rather than rewriting existing rules into newly amended rules. Given the expedited time-frame of this rulemaking, it was determined that cross-referencing was an expeditious way to assure that all of the requirements are listed in the rule. However, in order to clarify for all interested parties what the expectations of the rules are, IDEM agrees that removing cross references and writing out specific requirements is preferable. IDEM will continue to work to remove as many cross references as possible and will work to craft a 'stand alone' version of the rule as we work toward final adoption.

*Comment:* Notice of Intent Letter Requirements. In Section 5(b)(1) this should read owner OR operator to be consistent with the federal EPA rule. Section 5(b)(9) receiving Stream, makes no sense, is not part of the federal EPA rule and should be stricken. These are zero discharge operations, so we can't understand how this is relevant. We find no reference in the EPA rule where they want to know the nearest locations of waters and to include this point just allows the information to be taken out of context. Section 5(b)(10) CFO reference number is again confusing in a federal NPDES program. We would propose you strike this language, As you know, one of our key concerns over the federal NPDES program is the dual state and federal permitting system this creates. Use of the CFO number implies a dual authority scenario again and should be eliminated. Regarding Section 5(d), while we understand the federal intent is to provide the public notice we do not know if the applied reference meets the requirements put forth in CFR Section 124.10. Any referenced notice should comply with this standard and not be more stringent than the standard as well. With reference to Section 5(e)(2) there is no reference we can find to a monthly publication in the federal EPA rule. Notification through a public notice and to the interested public should suffice. Until this is further explained, we would see the "monthly publication" going beyond federal intent and therefore unnecessary. We would also encourage the newspaper publication requirement e restated to read the public notice. (INPAC)

*Response:* Reference to the receiving stream information has been deleted. Although 40 CFR 122.28 lists receiving stream information as a requirement for a NPDES application, the amended federal CAFO rule specifically has removed it as a requirement. The requirement for a CFO identification number for CFOs that currently have an approval number should not be a hardship and will allow staff to keep accurate records to assure that there is, in fact, no undue duplication between the CFO and CAFO programs. IDEM has removed the language that may have required publication by an applicant in a newspaper of the intent of a facility to be covered by the NPDES permit. The monthly publication that IDEM uses to provide notice of NOIs received is consistent with IDEM's policy on all other NPDES general permits. 40 CFR 122.28(b) provides that anyone must have the ability to petition the commissioner, at any time, to require an individual permit for a source that intends to be, or is covered by a NPDES general permit. It would be difficult for someone to petition if he or she was not aware that a notice of intent had been submitted. IDEM's publication is intended to provide information to the interested public.

*Comment:* 15-15-6 Notice of Intent Submittal Deadline. Due to the exposure of CAFOs to citizen legal actions, we would suggest additional language under Section 6. Utilizing language regarding the permit application shield for the air program (327 IAC 2-7-3), we would suggest the addition of language which would say, "If a CAFO submits a timely and complete notice of intent application

for an individual NPDES permit or application for renewal, any failure of that CAFO to have an NPDES permit is not a violation of this rule.” (INPAC)

*Response:* No application shield exists under the Clean Water Act, as it does under the Clean Air Act. Including such a shield would render the state program less stringent than federal law. Although the suggested language would protect the applicant from state enforcement, it would not protect the applicant from citizen suits under the Clean Water Act. The general permit rule notes that coverage under NPDES occurs 30 days after the department receives the NOI unless notified that there is a problem with the NOI.

*Comment:* 15-15-7 General Conditions. Section 7(b) should be modified in accordance with our earlier comments regarding the confusion surrounding dual authority by dual references to the state CFO rule. We would recommend you include the language regarding performance standards in 327 IAC 16-3-1 and eliminate additional references to 327 IAC 16 and the requisite MMP. Again, this will serve to streamline the dual permitting problem by allowing for similar outcomes without duplicative paperwork and confusing authority. (INPAC)

*Response:* IDEM agrees and will work to remove the cross-references to the CFO program and spell out specific requirements within the rules in the version of the rule that is presented for final adoption.

*Comment:* 15-15-8 Specific Permit Conditions. We would propose subsection (1) be deleted altogether. Again the reference to the MMP is irrelevant to the federal NMP unless it suffices to meet federal NMP requirements. It does not make sense to require CAFOs to keep dual state and federal permitting systems. No other entities that hold NPDES permits, including industries and municipalities are also required by statute to have a separate state permit. In subsection (2), please not our earlier comment regarding the use of the NRCS 590 standard. We would suggest IDEM modify this language. Regarding subsections (3) - (8), these must be reviewed to ensure they fully comply with federal EPA rules. Language that goes beyond the federal rule should be stricken. References to the state CFO rule, as in (7) (8)(D) and (G), should be stricken and replaced with federal EPA rule language. Any conditions beyond that, which may be further defined by EPA’s guidance in 2003, should not be in this rule until EPA speaks. (INPAC)

*Response:* The specific permit conditions section has been substantially altered. The requirement to obtain construction approval provides the necessary safeguards before a new operation is constructed that the existing rule’s construction standards will be met. The federal NPDES permit program is not a construction program but an operation program. States generally supplement the federal NPDES permit program for wastewater treatment plants and for facilities such as CAFOs with a state construction permit program. Flexibility has been built into the rule regarding the use of the NRCS 590 standard which would allow someone to demonstrate that an alternate method is as environmentally protective as the 590 standard. IDEM will continue to work with EPA to clarify provisions of the rule as we move through the process.

*Comment:* 15-15-9 Inspection and Enforcement. We have a concern with the confidentiality of on-farm records as noted in Section 9(a). In the federal EPA rule, the intent was for a CAFO annual report to be made available upon the public’s request. The information from the annual report should suffice and confirm that the CAFO is appropriately controlling any discharge and is following its nutrient management plan. To go beyond this intent and copy “any” records, which now become part of the public record, goes beyond federal intent. (INPAC)

*Response:* The language mirrors language for NPDES permits found at 40 CFR 122.41(i). It is a federal requirement.

*Comment:* 15-15-11 Duration and Renewal of Coverage. Section 13(c) implies a dual permit system. In accordance with our previous comments regarding dual permitting, we would propose you delete the last two sentences in subsection (c). (INPAC)

*Response:* The last 2 sentences of the subsection have been removed.

*Comment:* Sec. 3(a) Apparently applies to a limited range of potential CAFO waste, but should also include eggs, eggshells, egg wash water, feathers, hair, carcasses, vomit, urine, waste food, and any material contaminated with manure etc. (SC)

*Response:* The rules apply to all animals in confinement, all manure, litter, and process wastewater generated by those animals or the production of those animals. The terms “manure” and “process wastewater” are defined to further clarify what is encompassed in the rule. The above listed materials would all be covered by the definition of process wastewater.

*Comment:* Sec. 3(b)3 defines CAFOs as large and medium based on numbers of animals of various types as stated in the federal regulations. These are far in excess of 327 IAC Article 15 definitions of CFOs under that rule. Does this revision of NPDES applicability indicate a potential revision of 327 IAC 16? Does this indicate that CAFOs smaller than medium will not be required to have NPDES permits? (SC)

*Response:* The CFO definition is the state statutory definition and is different than the federal definition. Any CFO that discharges into the water, regardless of size, may be required to apply for a NPDES permit.

*Comment:* Sec. 3(b)9B indicates that the NPDES permit is applicable to waste that is released to the waters of the state via a ditch or other manmade conveyance. What about overland runoff, animals with direct access to streams, and release to groundwater that flows into a stream? (SC)

*Response:* That definition has been removed from the rule because it was also removed from the federal rules under the most

recent amendments. IDEM will not approve confinement operations that allow the animals direct access to waters of the state. Any discharge into waters of the state is prohibited under this rule. IDEM also added a prohibition against animals having direct contact with water in the General Conditions Section.

*Comment:* Sec. 3(b)10 - what are the criteria that will allow certification of “no potential to discharge”? How is it possible to arrive at this for material that runs off with rainwater from confinement areas and disposal sites? (SC)

*Response:* EPA has indicated that the “no potential to discharge” demonstration will have to meet a very high standard. If all manure pits are covered and the operation engages in no land application of manure, the demonstration may be met. IDEM will continue to work with EPA to determine what criteria would be necessary for an applicant to meet this very difficult standard.

*Comment:* Sec. 3(c)2 exempts a facility from applying for a permit or compliance with the state has inspected the facility. At the current capacity to even inspect complaints, much less current CFO permits, how can the state possibly get to these facilities? Many months will pass with many of them failing to meet standards. (SC)

*Response:* The requirement that a small AFO operation cannot be designated as a CAFO without a site visit is from the federal rules. The reality is that if there is a violation at a smaller operation which is discovered either as a part of routine inspection or due to a reported problem, an inspector will be sent to the site to assess the situation. AFOs that are subject to the state CFO approval problem are required by law to report any discharges to waters of the state, which is the very thing that could require them to be designated as CAFOs. Failure to report any such discharges would result in additional violations for the facility.

*Comment:* Sec. 3(d) exempts the large facilities but not the medium CAFOs. What is the reasoning behind this exemption of the largest facilities, which may potentially have the greatest problems? (SC)

*Response:* The exemption language in subsection (d) is new language under the federal rule. The “no potential to discharge” exemption is a very difficult standard for any CAFO to meet. The requirement for demonstrating no potential to discharge has not been extended to small and medium AFOs since the specific criteria that must be met prior to an AFO becoming a CAFO is the existence of a discharge. Whereas large AFOs are defined as CAFOs based on the number of animals alone, small and medium AFOs only become CAFOs after meeting specific discharge-related criteria. Note that the commissioner can require a NPDES permit from any facility that demonstrates that there is no potential to discharge should there be a change in circumstances at the facility that would change the potential to discharge status.

*Comment:* Sec. 10(d) does not allow for citizen input or comment on permits. In addition, both the original CFO permit application and the NPDES permits should be available to responsible individuals for review and comment as required under the Clean Water Act. (SC)

*Response:* The no potential to discharge request must be public noticed. Although there is no provision for public comment on the request, the general public will know when such a request is submitted and can provide information that may refute the basis for such a request. Any decision on the no potential to discharge request is, as with any agency final decision, appealable under IC 4-21.5. Any individual NPDES permit issued will go out for public notice and comment, as required under the Clean Water Act.

*Comment:* Sec. 12 allows discharges to waters of the state if they do not exceed the limits for 40 CFR 412. This reverses the Indiana CFO rule of “zero discharge”. It also violates the intent of the TMDL concept, which does not allow new discharges without assessing the current stream waste loads and the capacity of the stream to accept additional contaminants. (SC)

*Response:* The discharge limit allowed under the 412 guidelines is still “zero discharge”. The 412 requirements apply to large CAFOs, which must be designed to contain all process generated waste waters plus the runoff from a 25-year, 24-hour rainfall event. Any overflow as the result of a larger rainfall event is considered agricultural stormwater, which is exempt under the Clean Water Act. Any discharge is required to meet state water quality standards.

*Comment:* Sec. 3(d) does make the NPDES permit apply to the waste disposal site, but allows contamination if the application meets IAC 16 guidelines. This runs counter to the intent of Article 16 for “zero discharge”. Additionally, Article 16 does not adequately specify land application criteria. In addition to relatively poor specifications for nutrient loading calculations, it does not address phosphorus, nor provide the best available practices as recommended in such guidance as NRCS Conservation Practices Standards 590 and 633, or other relevant guidance. Because failure to correctly manage the waste can lead to serious, long-term damage, allowing such a “loose” requirement invites noncompliance with potential fraud in preparing waste management plans coupled with the need to prove willful noncompliance before the agency can prosecute, will cause severe damage with no remedy or punishment. (SC)

*Response:* The practices for land application contained in the referenced Article 16 rules represent the best management practices required to be applied under the new federal rules. IDEM has worked closely with EPA during the development of those rules as well as these CAFO rules to ensure that the practices required in the rule meet federal requirements. All permitted CAFOs will be required to test for phosphorus, pursuant to NRCS standard 590, under these rules.

*Comment:* Prior to issuance of a State Operating or NPDES permit, the public must be afforded the opportunity to comment on the proposed permit. A Public Notice or Notice of Intent should be issued, the proposed permit should be forwarded to entities that have requested to be on a mailing list, and copies of the proposed permit must be provided to adjacent and neighboring landowners

(those within 2 miles of the site). The comment period must be for a period of at least 30 days. (SC)

*Response:* This issue is currently the subject of pending legislation in SB 533. The outcome of that legislation will effect what type of notice and comment period will be provided.

*Comment:* No General Permit (one-size-fits-all) should be issued to large CAFOs (more than 5,000 Animal Units\*, for example) to any operation that has had a water quality violation within the past 5 years, nor to any operation under contract with an agribusiness “integrator”. The large operations, violators, and contract operations must obtain a site-specific individual permit. (SC)

*Response:* IDEM believes that the NPDES general permit for CAFOs is the most efficient method of regulation for existing CAFOs that have not had a discharge given the fact that each operation must engage in best management practices and develop plans for both the production and land application areas of the operation. Individual permits would not, as a general matter, provide additional environmental protection for established CAFOs that have had not had a discharge in the majority of cases. Individual permits will still be required in instances where there are water quality violations and other appropriate situations.. This allows IDEM to focus its resources on those operations that are problematic.

*Comment:* Any permit issued (whether GP or individual) must prohibit discharge of animal wastes to waters of the state. Any discharge of wastewater to waters of the state, including groundwater, shall constitute a violation of the no-discharge permit. This should apply to all components of a CAFO: growing or confinement buildings, cesspits, and land application areas. (SC)

*Response:* The general permit as well as any individual permit issued does prohibit the discharge of animal wastes to waters of the state.

*Comment:* 4.a. Each CAFO must prepare and implement a Comprehensive Nutrient Management Plan (detailing how the operation will land apply animal feces and urine). This CNMP must be made available to the public during the Public Notice and Comment Period, and should be considered an essential component of the permit. The CNMP, in short, becomes a permit condition. (SC)

*Response:* The combination of the manure management plan and the additional requirements of this rule constitute the basic requirements covered by a Nutrient Management Plan (NMP) required in the federal regulation. Facilities may develop a Comprehensive Nutrient Management Plan (CNMP) but are not required to do so as long as the other requirements of the rule are met. All permittees under this rule are required to submit an annual report that summarizes much of the information required in the plans. The plans must be kept on-site and used in the daily operation of the facility.

*Comment:* 4.b. There must be a prohibition against land application of wastes on frozen or snow-covered ground and during, prior to forecasted, or immediately after, rain events. (Also see #7 below). (SC)

*Response:* The prohibition against applying on frozen ground has been added to the rule. Article 16 rules, which apply to permittees under this rule as well, prohibit land application on saturated ground.

*Comment:* 5. The conditions of any permit issued must be sufficient to protect water quality and water resources. Since General Permits are a one-size-fits-all permit, the permit conditions must be scrutinized to ensure that ground and surface waters will not be negatively affected. (SC)

*Response:* This general permit rule requires that each permittee engage in best management practices each day of operation of the facility. Soil and manure testing is required as well as setbacks for land application. Specific manure management practices are built into the rule as well. All of these requirements are meant to assure that each facility subject to the rule will engage in practices that protect the environment every day. In cases where the general permit requirements are not sufficient to address a specific environmental problem, the commissioner has the authority to issue an individual permit.

*Comment:* 6. Cesspits (a.k.a. “lagoons”) must be constructed or lined in such a fashion that leakage does not occur. NOTE: While this seems to be self-explanatory and reasonable, many states permit cesspits to leak at prescribed rates. The cesspit should not leak or spill over under ANY circumstances. (SC)

*Response:* The design requirements for new earthen manure storage structures do allow for a seepage rate not to exceed 1/16th of an inch per day. Such new structures must also be certified by a professional registered engineer. The commissioner can also require monitoring systems, liners, or other protective measures if determined necessary to protect the environment. All new systems must be designed to hold the run-off from a twenty-five year, twenty-four hour storm and must have an emergency spillway that directs manure and wastes to secondary containment, a manure storage structure or a vegetative management system such as a filter strip. All systems must be designed to minimize leaks and seepage and prevent spills. Any discharge from such systems to state waters remains a violation.

*Comment:* 7. Animal wastes must be applied as fertilizer at optimal agronomic rates. This entails annual soil tests and the crop to be grown — the rate of application must be based on the needs of the soils for a specific crop. For example: legumes (alfalfa, soybeans, peanuts) don’t require nitrogen, so any plan to apply manures to these crops would not meet the “fertilizer test”. NOTE: There is no agronomic rate for trace metals (such as lead or chromium), consequently these should NEVER be land applied. (SC)

*Response:* Permittees are required to apply at agronomic rates and determine plant uptake in developing such rates. Soil and manure testing is required in this rule. Because the requirement to apply at the phosphorus rate is being phased into this rule it is believed that the level of trace metals that will be land applied will be very minimal.

*Comment:* 8. Any stormwater runoff of manure components from a land application area shall be indisputable evidence that the no-discharge permit condition has been violated. To ascertain this, upstream and downstream monitoring is required. (SC)

*Response:* As long as a permittee applies manure in conformity with the requirements of this rule and has a facility that is designed to handle the stormwater run-off from a twenty-five year, twenty-four hour storm, additional run-off from the facility will be considered agricultural stormwater, which is exempt from regulation under the Clean Water Act. Therefore, any stormwater run-off may not be indisputable evidence that the permit has been violated.

*Comment:* 9. Any GP or individual permit issued to a CAFO must require 1) upstream and downstream monitoring and 2) monitoring points where stormwater exits the land application area. (SC)

*Response:* The existing rules and this proposed general permit rule are a 'zero discharge' rule. In order to verify that no discharge exists, the rule requires documentation that the best management practices are being followed and that any discharge be reported. It is neither practical or necessary to attempt to monitor directly any runoff from this type of an operation. The state and federal rules rely on best management practices instead of discharge monitoring to protect the waters of the state.

*Comment:* 10 Cesspits should be of sufficient volume to store feces and urine generated by the CAFO and to hold a rain event of ANY duration (i.e., 24-hour/25-year, 24-hour/100-year, or a rainfall event lasting several days). The cesspits should be constructed in such a fashion that no runoff waters enter the pits — only direct rainfall should enter the pits. Consequently, even if there is a rainfall of 12 inches, the cesspit should only rise by 12 inches. (SC)

*Response:* Lagoons must be designed to contain a twenty-five year, twenty-four hour rainfall event. Further, the facility must be designed to contain the stormwater run-off from such a rainfall event as well. The run-off can be diverted to the lagoon or other stormwater retention devices. Lagoons must also contain depth markers that provide an estimate of capacity. Most new CFOs have lagoons described as above but there are existing operations that drain storm water from open lots into a lagoon. The open lot could have manure that is carried by the storm water into the lagoon. It is this type of operations that must be able to manage the specific rain event.

*Comment:* 11. No CAFO should be issued a permit or allowed to be constructed in a watershed of an impaired water body, a state or national outstanding resource waters, or in a watershed where the stream or river is in danger of not meeting "fishable/swimmable" standards. (SC)

*Response:* CAFOs subject to this rule must not discharge to waters of the state. If they comply with the rule, they will not contribute to water quality problems at any impaired waterbodies.

*Comment:* 12. The permit must require posting of a financial assurance instrument sufficient to properly enact closure of all cesspits associated with the CAFO. (SC)

*Response:* Financial assurance is not required under federal rules and has not been found to be necessary to ensure proper closeout of lagoons and facilities. The closure of such lagoons is not a significant cost and the state has not experienced a problem with such closures not occurring.

*Comment:* 13. The issuing agency must conduct random, unannounced inspections of the CAFO. (SC)

*Response:* IDEM currently conducts close to a 1000 inspections of CFOs and CAFOs annually and will continue to inspect as resources allow. Inspections are conducted randomly. Inspectors often contact a facility when they are in route to do an inspection to assure that someone will be there to discuss any specific bio-security provisions that must be followed to prevent the spread of any diseases.

*Comment:* 14. The issuing agency will respond to complaints of permit violations within 24 hours. (SC)

*Response:* IDEM currently responds to complaints for any facility subject to environmental rules as rapidly as practical. Typically, the agency does respond to complaints concerning spills in less than twenty-four (24) hours. Based on the nature of non-emergency complaints the response may be longer than twenty-four (24).

*Comment:* 15. The permit fee and the funds generated shall be sufficient to cover the costs of the issuing agency in administering the program, including comments 12 and 13 above. (SC)

*Response:* Fees are established by the General Assembly and are therefore not a rulemaking issue.

## **SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On May 8, 2003, the Water Pollution Control Board (board) conducted the first public hearing/board meeting concerning the development of amendments to the rules for the nonpoint source pollutant discharge elimination system general permits for confined animal feeding operations in 327 IAC 5-4-3 and 327 IAC 15-15. Comments were made by the following parties:

Rae Schnapp, Hoosier Environmental Council, (HEC)

Cal Jackson, Creighton Brothers, (CBR)

Paul Brennan, Indiana Poultry Association, Inc, (ISPA)

Donita Rodibaugh, Indiana Commission for Agriculture and Rural Development, (ICARD)

Barbara Sha Cox, (BSC)



Chad Frahm, Indiana Farm Bureau, (IFB)  
Rick Ward, R & R Ward Farms, Inc., (RRW)  
Ken Rulon, Rulon Enterprises, (RE)  
John Ulmer, Sierra Club, (SC-U)  
Terry Fleck, Indiana Pork Advocacy Coalition, (INPAC)  
Glenn Pratt, Sierra Club, (SC-P)  
Kim Winger, (KWIN)

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

*Comment:* Our main concerns have to do with the public-notice aspects in the emergency rule. We think it's very important for adjoining property owners and local people to have notice that a confined feeding operation is applying to be regulated under the General Permit Rule, because those people would have information as to whether or not the operation qualifies for general permit coverage. (HEC)

*Response:* IDEM continues to work with all interested parties to attempt to develop a consensus on the issue of proper notification for Notices of Intent for existing CAFOs. IDEM agrees that neighbors of facilities may have information regarding particular facilities that the agency would, otherwise, not be aware of.

*Comment:* Specific criteria needs to be incorporated into the rule to make it clear under what circumstances a facility is eligible for a general permit. Such criteria should include that the notice of intent is complete and accurate, that the facility has not had a discharge within the past five years, and that any discharge from the facility is not likely to impact a sensitive area. (HEC)

*Response:* IDEM agrees that the notice of intent must be complete and accurate. Language will be added to the rule to reflect that requirement, which can also be found in federal law at 40 CFR 122.28(b). IDEM also agrees that the rule would benefit from having some specific criteria for determining eligibility for a general permit. We will work with interested persons to attempt to develop a consensus.

*Comment:* The operator should have to certify that they are following the manure management plan. (HEC)

*Response:* IDEM believes that the manure management plan required in the existing CFO rule is not specifically needed in the CAFO general permit rule. The operational requirements that apply to a CAFO constitute the content of a manure management plan and are therefore directly enforceable by rule.

*Comment:* We support the NPDES General Permit Rule approach as it allows multiple sites owned by the same company to have the same permit with the same set of regulatory criteria in support of the NPDES General Permit Rule. (CBR)

*Response:* IDEM agrees that the general permit approach will simplify the regulatory process for those individuals with several facilities in the state.

*Comment:* The general permit will have Indiana's standards on it, and anybody that would have a general permit would be required to fulfill these standards and is committed to doing so. We cannot afford in Indiana to have additional permitting, have individual permits for each of our operations would chase business from our state. I'm not talking about operations that leave because of their poor environmental histories. The board is encouraged to review the rule and make a decision, of course, very thoughtfully, but to recognize the value and impact that having a general NPDES permit would have versus not having that permit and losing that option. (ISPA)

*Response:* IDEM agrees that the option to obtain a general NPDES permit is a good one for facilities with a good environmental record in the state.

*Comment:* The main point is that we do agree with the development of a general permit system for an NPDES permit. What is best for the State of Indiana is a climate that fosters profitable lifestyle sectors, and an opportunity for growth. ICARD is asking that you carry out your responsibility of passing sound rules that will protect the environment and also do what is best for the State of Indiana. (ICARD)

*Response:* IDEM agrees and will continue to work with ICARD and all interested parties to craft a rule that is environmentally protective and provides certainty to the regulated community as to what standards apply to it.

*Comment:* We are concerned with the impact mega farms could have the surface and ground water, especially our drinking water wells. We are also concerned with the proposal that the sites not receive construction approvals as there are multiple examples of improper construction with the oversight that is currently occurring. We do support some of this from the Indiana Clean Water Coalition. (BSC)

*Response:* IDEM is committed to developing rules that protect Indiana's environment. IDEM believes it is important that construction requirements be part of the program. Facilities need to be constructed to prevent leakage into drinking water sources. Further, under these proposed rules, discharges, except in very limited circumstances, are prohibited.

*Comment:* When government regulation is necessary to protect people and property in Indiana, the Indiana Farm Bureau supports rules that are clear, concise, and easily understandable. The Farm Bureau supports the adoption of a CAFO NPDES General Permit Rule by the Water Board today. Emergency adoption now, and eventual final adoption, is necessary to allow IDEM the flexibility

needed in properly administering a new federal rule and abiding by Judge Barker's orders from the Save the Valley case. This will also relieve IDEM from being required to issue individual NPDES permits for all federally defined CAFO's. A true general permit for CAFO's for individuals proposing to construct and/or operate CAFO's certified to IDEM of their intent to comply with a general NPDES permit is necessary. (IFB)

*Response:* IDEM agrees that the general permit approach will allow implementation of the new federal standards in Indiana in a timely way and will allow IDEM to meet the federal court order to issue NPDES permits to all federally defined CAFOs in Indiana.

*Comment:* The Farm Bureau opposes redundancy in state and federal operating permits for confined operations. Because Indiana has a state regulatory framework for confined feeding operations, certain CAFO's that are also federally defined will have to comply with dual state and federal requirements. The Farm Bureau appreciates the inclusion of language in Section 7 of the rule, 327 IAC 15-15-6, that eliminates this redundancy. (IFB)

*Response:* IDEM will continue to work to assure that there are not redundancies within the state permitting programs.

*Comment:* The Farm Bureau supports CAFO construction oversight according to state approved standards. The general permit notice of intent should include a commitment to construct the facility according to state approved construction and performance criteria. The Farm Bureau believes that the construction standards for federally defined CAFO's should be identical to the current criteria for state CFO's. (IFB)

*Response:* IC 13-18-10 provides for IDEM oversight of construction under the state CFO program. IDEM believes that construction oversight for both CFOs and CAFOs is an important aspect of an environmentally protective program.

*Comment:* The Farm Bureau believes neighbor and adjoining landowner notification of proposed confined feeding operations is necessary. The rule before you today does allow for notification through the CFO approval process. The general permit notice of intent should also describe how neighbors and adjoining landowners of a facility have been notified of the intent to construct and operate a CAFO. Notification to special interest groups, lobbyists and other activists who are not members of the local geographical community in which a CFO or CAFO is constructed and operated should not be required. (IFB)

*Response:* IDEM continues to work with all interested parties to determine what level of public notice is appropriate.

*Comment:* The Farm Bureau believes that the current IDEM interpretation of potentially affected parties goes beyond what is required per the Administrative Orders and Procedures Act notification process. This broad interpretation of Indiana Code 4-21.5-3-5, and the manner in which IDEM notifies parties, needs to be addressed. (IFB)

*Response:* IDEM agrees that the level of public notice is an issue that must be further discussed with all interested parties prior to finalizing this rule.

*Comment:* We agree with others that there are frivolous objections and appeals being brought that do not allege permit violations or water quality violations, causing costly delays in time and attorneys fees for the farmer and IDEM to defend. We would like to tighten up the ability to appeal and object to permits that focus on the permit itself and actual water quality issues and not odor or air or land issues, because those are not something that either IDEM or the Water Board has authority over. The purpose of many of the appeals is to prevent the economic development of Indiana's agriculture industry. The Farm Bureau believes this issue needs to be addressed for all confined feeding operations in the state, not just the largest. (IFB)

*Response:* IDEM is not aware of a large volume of frivolous objections to its permitting decisions related to CAFOs. The rule specifies that IDEM's decisions are based on water quality issues. IDEM agrees that the rule may benefit from more specificity on this point and there may also be administrative changes to IDEM notification that may also assist in properly informing the public of their rights and limitations under the rule.

*Comment:* In general, as a swine producer, I support the NPDES permits. (RRW)

*Response:* IDEM agrees that the NPDES general permit rule is an effective vehicle for addressing the federal requirement for NPDES permits for CAFOs.

*Comment:* My concern is with the fee structure. Currently I pay \$100 for five years to comply with state regulations concerning my operation. The new regulations asks for \$400 per year over a five-year period. The increase is not only unfair, but it is a huge financial burden on family farms. I would ask that the Water Board consider adding language to the rule that clarifies the fee structure to match the legislative intent in House Bill 533 to \$150 for five years. (RRW)

*Response:* Fees for NPDES permits are established by the legislature in statute. Currently there is a \$50 application fee for both individual and general NPDES permits. There is also a \$400 annual fee for individual NPDES permits. The statute does not specifically establish an annual fee for general NPDES permits for CAFOs.

*Comment:* Notification was asked for, for general NPDES permits. I believe that's unnecessary. I believe it is fine for those individuals who have had a discharge and need individual permits. I believe that to notify adjoining landowners can be a good thing, but for those of us that have never had a permit -- or a violation, never had a discharge, I feel it's an unnecessary regulatory burden. (RRW)

*Response:* IDEM will continue to work with all parties on the issue of public notification for NOIs for existing CAFOS.

*Comment:* We greatly appreciated the way IDEM has worked with the pork producers and the Farm Bureau to develop a general

permit rule that, I believe, makes a lot of sense in a lot of different areas. (RE) (IFB)

*Response:* IDEM will continue to work with all interested parties on this rulemaking.

*Comment:* Farms have a zero tolerance for discharge of pollutants, and most farmers in Indiana kill themselves not to drop one drop of manure in the water, because our livelihoods are history. One of the concerns we have is the separation in the general permit rule. IDEM is proposing a construction permit. I would point out to this Board that all 18 major spills in the State of Indiana occurred on farms that had obtained construction permits. That's the reason the court said we have to have NPDES operating permits. You don't spill manure when you build a facility; you spill it when you use it. (RE)

*Response:* IDEM believes that requiring construction approval is an environmentally sound requirement that serves to prevent problems before they arise, leakage from improperly constructed manure storage systems can lead to contamination of groundwater which is extremely costly to remediate.

*Comment:* I'm concerned as a farmer from Central Indiana by this apparently lack of concern by public officials. The whole purpose of the legislation was to remove dual regulatory structure as well as to establish the fact that there's not a need for a separate construction permit. We have a zero tolerance for discharge. (RE)

*Response:* The preliminarily adopted general permit rule aims to remove any overlaps that may exist between the state CFO program and the federally required CAFO NPDES permit program.

*Comment:* Don't make us certify that we have a deviations from our manure management plans, made a mistake or had a problem. We have to submit the plan anyway; we're audited routinely, more than once a year at this rate. If there's any deviations from that, I have to get written documentation from third-party people that the manure was applied as I said I would apply it. Self-certification, in our minds, does nothing but establish an adversarial role with IDEM, which we really don't want to see. We need their help when there's a problem. Also, we do standard well water testing. Our wells go right underneath our hog manure pits. The standards that are in place do work. Also, contrary to some of the testimony you received today, we don't hire immigrants. I admire these dairy farms that are bringing immigrants to American and letting them live the American dream. Water pollution standards must be based on good policy. (RE)

*Response:* IDEM will continue to work to establish a fair, effective confined feeding regulatory program that should allow the industry to prosper and the water quality to be protected.

*Comment:* I spend a lot more time on paperwork now than five years ago. So, we don't see the need for a separate construction permit. Spills don't happen when you build it. (RE)

*Response:* IDEM continues to believe that the approval of construction is an important component of an environmentally sound regulatory program.

*Comment:* In terms of notification to obtain the NPDES permits for existing facilities, we don't see any benefit to that. Everybody knows we're already there. IDEM already has us on the GPS logs. It's public record. (RE)

*Response:* IDEM will continue to work with all interested parties on establishing an appropriate level of public notification in the permitting process.

*Comment:* A real concern is with confidentiality. Any information that we have to report to IDEM becomes public record, or so it seems, and we're very concerned about this as we go ahead into this process of rules and developing an ongoing track record of individuals' operations. We have a fertility management system that is actually very proprietary. (RE)

*Response:* The commentor is correct that information submitted to the agency becomes a public record upon submission, unless the person submitting the information also submits a claim of confidentiality in accordance with rules adopted by this board. Confidentiality rules are found at 327 IAC 12-1.

*Comment:* All 7500 members of the Sierra Club fully supports the papers that you received from the Indiana Clean Water Coalition. (SC-U)

*Response:* IDEM appreciates the participation of the Sierra Club, the Clean Water Coalition and all interested parties' participation in this rulemaking.

*Comment:* In general, we are supportive of a general NPDES permit for concentrated animal feeding operations. But would encourage the Board to enact the one-permit concept that functions very much like general NPDES permits function now. The general permits would state that livestock farms need to be built and operate under the zero discharge standard, and that they should operate under a general permit, as they're nonsite specific -- under the nonsite specific permit process. This would address the issue of removing the construction permit, but would allow the construction standard. It would continue with the performance standard that is already outlined in the current CFO rule. The threat of an individual permit provides adequate incentive for the operator to make the requested changes to construction. After all, they must certify under penalties of perjury that they have built the operation according to IDEM building and construction standards. Our suggestions are consistent with the general permit process. They would keep our farms focused on the performance standard and would allow, again, IDEM an opportunity to address a general or an individual designation on a case-by-case basis. The general NPDES permit process allows public noticing and public input. (INPAC)

*Response:* IDEM believes that construction approval is a necessary component of the rule. Our experience indicates that

elimination of the construction approval requirement may result in a reduction in the effectiveness of current construction oversight and therefore increase impacts on water quality.

*Comment:* 327 IAC 15-15-10, subsection (3) calls for an annual report to the Department of Environmental Management by the 15th of February each year. This is a new report and one that is a deadline that could be missed. In an effort to not allow those reports to be easily missed, we believe it would be advisable for the agency to send a form to CAFO's of record by January 1st of each year with the form that is being requested and ask them to return that by the 15th of February. (INPAC)

*Response:* IDEM will continue to work on this issue and determine what would be the best way to assure compliance with the annual reporting requirements.

*Comment:* 15-15-12 and 15-15-13, address the need to add some language concerning appeal rights. These both talk about determinations by the agency, and set a time frame for gaining a permit at 30 days after the agency has made a determination, and we believe that that language should be augmented with an opportunity for appeal process and should be so noted in the rule. (INPAC)

*Response:* Any final agency action is appealable under IC 4-21.5 whether specifically noted in the rule or not. However, clarity on the appeal process can be provided in the rule.

*Comment:* We are concerned with inexperienced operators and operations that are not constructed properly. Also we are concerned about owners with farms in other states that have had many violations and are now considering farm operations in Indiana. We would like Indiana to look at requiring good character provisions in the rule. (KWIN)

*Response:* Currently, there is no provision in Indiana law that allows IDEM to review past violations or activities in other states as a pre-condition to receiving a NPDES permit. IDEM does have the authority to review the compliance record of an existing facility in determining whether to renew or revoke a permit.

*Comment:* To protect the people that are doing a good job and to try to promote credibility of the whole industry, I would strongly encourage you to add good character to the requirements. Word the rule changes based on other state regulations. (SC-P)

*Response:* Currently, there is no provision in Indiana law that allows IDEM to review past violations or activities in other states as a pre-condition to receiving a NPDES permit.

*Comment:* Would there have to be statutory authorization for the application of good character? My understanding, in talking to a non-IDEM attorney, is the answer would be no. But having it in the legislature gives you a much stronger base to work from. Where we have a track record of a few people who have caused the vast majority of the real problems. (SC-P)(HEC)

*Response:* Specific statutory authority exists allowing the agency to consider past convictions for violations of environmental laws only for solid and hazardous waste permits. No such authority has been granted to the agency by the legislature for any other type of permit over which the agency has authority.

### **327 IAC 5-4-3**

### **327 IAC 15-15**

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 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 program 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. The term 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.

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

(A) A lot or 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.

(3) “CFO approval” means a valid approval issued by the commissioner under 327 IAC 16.

(2) (4) “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
- (JJ) 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:

(4) “Man-made” means constructed by man and used for the purpose of transporting wastes.

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.

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

(6) “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 for ducks.

(M) Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system for ducks.

(7) “Liquid manure handling system for ducks” means any waste collection or storage system that involves the use of ponds for animal confinement and that collects waste generated by ducks or contaminated storm water from the production area.

(8) “Manure” means animal waste, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.

(9) “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.

(10) “Medium concentrated animal feeding operation” or “medium CAFO” means the following:

(A) Any AFO that stables or confines 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 for ducks.
- (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 for ducks.
- (B) 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.
- (11) “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.
- (12) “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 or is a constituent of any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs, or bedding.
- (13) “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.
- (14) “Raw materials storage area” includes, but is not limited to, the following:
  - (A) Feed silos.
  - (B) Silage bunkers.
  - (C) Bedding materials.
- (15) “Small concentrated animal feeding operation” or “small CAFO” means an AFO that is designated as a CAFO and is not a medium CAFO.
- (16) “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~~ **pollutants** 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~~ **manure** 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)(6)** 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 permit 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 15-15-12.** *(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, July 2001.**

*(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 except in the event of an agricultural storm water discharge. A precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge provided the manure, litter, or wastewater has been applied in accordance with site-specific nutrient management practices and the requirements of this rule.

(e) An owner or operator proposing construction:

(1) of a CAFO;

(2) at a CFO that results in an increase in the number of animals such that it becomes a CAFO; or

(3) of a confinement building or waste management system at a CAFO;

must apply for an approval in accordance with section 4 of this rule. (*Water Pollution Control Board; 327 IAC 15-15-3*)

#### **327 IAC 15-15-4 Construction approval**

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

Affected: IC 13-18-10

Sec. 4. (a) An owner or operator proposing either construction of a CAFO, construction at a CFO that results in an increase in the number of animals such that it becomes a CAFO, or construction of a confinement building or waste management system at a CAFO must apply for a CFO approval from the commissioner in accordance with the following:

(1) 327 IAC 16-3-1(d) through 327 IAC 16-3-1(e).

(2) 327 IAC 16-5.

(3) 327 IAC 16-7-1.

(4) 327 IAC 16-7-2.

(5) 327 IAC 16-7-5 through 327 IAC 16-7-13.

(6) 327 IAC 16-8.

(b) If the proposed construction for the CAFO meets the requirements of this section, as applicable, the commissioner will issue an approval. The approval can only be denied for noncompliance with applicable provisions in this section and this rule. (*Water Pollution Control Board; 327 IAC 15-15-4*)

#### **327 IAC 15-15-5 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. 5. All CAFOs, or AFOs designated as CAFOs under 327 IAC 5-4-3(c) or 40 CFR 122.23(c), within the boundaries of the state are regulated by this rule. (*Water Pollution Control Board; 327 IAC 15-15-5*)

#### **327 IAC 15-15-6 CFO approvals for CAFOs subject to the general permit rule**

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

Affected: IC 13-18-10

Sec. 6. (a) Qualifying for this general permit rule constitutes an approval under IC 13-18-10.

(b) A CAFO that has a general permit is not required to obtain or renew the CFO approval under 327 IAC 16-7-3 and 327 IAC 16-7-4 in order to operate.

(c) A CFO approval under section 4 of this rule is required for construction designated under section 4 of this rule. (*Water Pollution Control Board; 327 IAC 15-15-6*)

#### **327 IAC 15-15-7 Notice of intent letter requirements**

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

Affected: IC 4-21.5; IC 13-18-10

Sec. 7. (a) The owner or operator of a CAFO shall submit a notice of intent (NOI) letter, on a form supplied by the

commissioner, 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, telephone number, and mailing address of the owner and operator.
- (2) Facility name and location address. Contact person and telephone number.
- (3) Type and number of animals at the facility.
- (4) Type of containment and storage and total capacity for manure, litter, and process wastewater storage.
- (5) Total number of acres under control of the applicant available for land application.
- (6) Estimated amount of manure, litter, and process wastewater transferred to other persons per year (tons/gallons).
- (7) List of other environmental permits held and permit numbers including the CFO farm ID number provided on state CFO approval under 327 IAC 16.
- (8) A topographic map of the facility.
- (9) Payment of application fee of fifty dollars (\$50).
- (10) SIC code for the facility.

(c) The NOI letter must be signed by:

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

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

- (1) Review the NOI for completeness and applicability under this rule.
- (2) Consider comments received on whether a facility meets the eligibility requirements for a general permit.
- (3) Determine if the facility is eligible for a general permit under this rule or will be required to obtain an individual NPDES permit under 327 IAC 5.
- (4) Request additional information, if needed.
- (5) Notify the facility, within ninety (90) days of receipt of the NOI, that the applicant:
  - (A) qualifies for the general permit under this rule;
  - (B) does not qualify for the general permit under this rule; or
  - (C) must submit an individual NPDES permit application.

(e) In accordance with 40 CFR 122.28(b), any interested person may petition the commissioner to require a person subject to this rule to apply for and obtain an individual NPDES permit.

(f) Compliance with the NOI letter submission requirements under this rule may not be transferred. If ownership of a facility is transferred to a new person, that person must submit a NOI letter under this section or apply for an individual NPDES permit under 327 IAC 5. The new owner must submit the NOI at least thirty (30) days prior to beginning operation at the transferred facility.

(g) A determination under this section is appealable under IC 4-21.5. (*Water Pollution Control Board; 327 IAC 15-15-7*)

#### **327 IAC 15-15-8 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. 8. (a) The following are required to submit an NOI on or before April 13, 2006:

- (1) CAFOs with one thousand (1,000) or more cow/calf pairs.
- (2) CAFOs with one thousand (1,000) or more veal calves.
- (3) CAFOs with ten thousand (10,000) or more swine weighing less than fifty-five (55) pounds.
- (4) CAFOs with one hundred twenty-five thousand (125,000) or more chickens other than laying hens and if the operation uses other than a liquid manure handling system.
- (5) CAFOs with eighty-two thousand (82,000) or more laying hens if the operation uses other than a liquid manure handling system.
- (6) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOS prior to that date because the

operation discharged, is discharging, or will discharge only in the event of a twenty-five (25) year, twenty-four (24) hour storm.

These CAFOs must maintain a CFO approval under 327 IAC 16 until the NOI is submitted to comply with this rule.

(b) Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date because the operation has not discharged, does not discharge, and will not discharge except in the event of a twenty-five (25) year, twenty-four (24) hour storm must certify to the commissioner in writing within ninety (90) days of the effective date of this rule that the AFO was not required to apply for a permit under 327 IAC 5 and that a discharge has not occurred from the operation and the operation was constructed and is at all times being maintained to preclude discharge during dry weather and wet weather up to and including the twenty-five (25) year, twenty-four (24) hour storm. The certification shall be signed in accordance with 327 IAC 15-4-3(g). Any operation that has a discharge after certifying to the commission under this subsection shall submit an NOI within thirty (30) days after the discharge.

(c) The owner or operator of any existing CAFO, except those listed in subsection (a) or timely certifying under subsection (b), shall submit a NOI letter within ninety (90) days of the effective date of this rule.

(d) 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 and must comply with all requirements of this rule upon submittal of the NOI.

(e) Operations designated as a CAFO in accordance with 327 IAC 5-4-3(c) or 40 CFR 122.23(c) must submit an NOI no later than ninety (90) days after receiving the notice of designation. *(Water Pollution Control Board; 327 IAC 15-15-8)*

#### **327 IAC 15-15-9 General conditions**

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

Affected: IC 13-18-10

Sec. 9. (a) In addition to the conditions set forth in this rule, the conditions for a NPDES general permit under the following apply:

- (1) 327 IAC 15-1-1, Purpose.
- (2) 327 IAC 15-1-2, Definitions.
- (3) 327 IAC 15-1-3, Department request for data.
- (4) 327 IAC 15-1-4, Enforcement.
- (5) 327 IAC 15-2-1, Purpose and scope.
- (6) 327 IAC 15-2-3, NPDES general permit rule applicability requirements.
- (7) 327 IAC 15-2-4, Administrative requirement for NPDES general permits.
- (8) 327 IAC 15-2-5, Notice of intent letter.
- (9) 327 IAC 15-2-6, Exclusions.
- (10) 327 IAC 15-2-7, Effect of general permit rule.
- (11) 327 IAC 15-2-8, Nontransferability of notification requirements; time limits for individual NPDES permit applications.
- (12) 327 IAC 15-2-9, Special requirements for NPDES general permit rule.
- (13) 327 IAC 15-2-10, Prohibitions.
- (14) 327 IAC 15-4-1, excluding subsections (h) and (m), General conditions.
- (15) 327 IAC 15-4-3, Reporting requirements.

(b) The permittee must comply with 327 IAC 16-9 through 327 IAC 16-12 and must maintain the manure management plan (MMP) required under 327 IAC 16-7-11.

(c) This permit does not constitute a new or amended permit under 327 IAC 16-10-3(f)(2).

(d) Animals may not have direct access to waters of the state.

(e) Disposal of dead animals must be handled under rules of the Indiana state board of animal health at 345 IAC 7-7-3.

*(Water Pollution Control Board; 327 IAC 15-15-9)*

### **327 IAC 15-15-10 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. 10.** The specific permit conditions in this section apply to all CAFO NPDES general permits. Permit holders must do the following:

(1) Obtain approval under 327 IAC 16-7-1(b) for any change in design or construction under 327 IAC 16-8 and 327 IAC 16-9-1.

(2) Comply with NRCS 590 Standard\* by December 31, 2006, unless the commissioner has approved an alternative method to minimize the potential for nutrients to be transported or to migrate. This approval is based on satisfying the intent of the NRCS 590 Standard\*.

(3) Submit an annual report to the commissioner by February 15 of each year for the previous calendar year 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.

(4) Develop soil conservation practice plan for land application areas within one (1) year after the effective date of this rule and implement the plan within three (3) years after the effective date of this rule. Developing and implementing a CNMP within the time frame specified in this subdivision satisfies this requirement. Any land:

(A) not owned or controlled by the CAFO to which manure is applied; and

(B) where the landowner does not implement conservation practices;

must be used in accordance with 327 IAC 16-10-3 through 327 IAC 16-10-5.

(5) Conduct manure testing for nitrogen and phosphorus annually.

(6) Land application of liquid manure on snow covered or frozen ground is prohibited unless done in accordance with a plan approved by the commissioner. The plan must demonstrate to the commissioner that land application under such conditions will not lead to run-off and discharge to waters of the state. The plan may include information about slope, barriers between the land application area and waters of the state, method of application, other conservation practices to be used, or any other information that would demonstrate that the potential to discharge pollutants to waters of the state is minimized. Permittees may not land apply under such conditions until receiving approval of the plan by the commissioner.

\*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 or on-line at <http://www.nrcs.usda.gov/technical/ECS/nutrient/590.html>. *(Water Pollution Control Board; 327 IAC 15-15-10)*

### **327 IAC 15-15-11 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. 11. (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 and 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 under 327 IAC 15-4-1 and IC 13-30. (*Water Pollution Control Board; 327 IAC 15-15-11*)**

**327 IAC 15-15-12 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. 12. (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 15-15-12*)

**327 IAC 15-15-13 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. 13. (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 commissioner. The commissioner shall notify the applicant within ninety (90) days of receipt of the NOI as required in section 7 of this rule. If the applicant does not receive notification from the commissioner within the time frames specified in this section, coverage

shall commence ninety (90) days from the date the commissioner receives the NOI.

(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.

(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 15-15-13)*

#### **327 IAC 15-15-14 Effluent limitations**

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

**Affected:** IC 13-18-10

**Sec. 14. (a)** CAFOs subject to this rule are required to meet the effluent limitations contained in 40 CFR 412\*.

(b) Compliance with general and specific permit conditions as required by sections 9 and 10 of this rule constitutes compliance with a nutrient management plan and implementation of best management practices as detailed in 40 CFR 412.4.

(c) Any discharges under this rule are required to meet water quality standards under 327 IAC 5.

\*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 15-15-14)*

#### ***Notice of Public Hearing***

*These rules are not scheduled for hearing at this time. When the public hearing is scheduled, it will be noticed in the Change in Notice section of the Indiana Register. 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). Copies of these rules are now on file at the File Room, Indiana Department of Environmental Management, Twelfth Floor, 100 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Bruce H. Palin  
Deputy Assistant Commissioner  
Office of Land Quality