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**TITLE 327 WATER POLLUTION CONTROL
BOARD**

LSA Document #04-38(E)

DIGEST

Temporarily amends provisions at 327 IAC 5-4-3 and adds provisions at 327 IAC 15-15. Authority: IC 4-22-2-37.1(a)(14). Effective February 6, 2004. Expires May 6, 2004.

SECTION 1. (327 IAC 5-4-3) (a) Concentrated animal feeding operations are point sources ~~subject to the~~ **that require NPDES permit program permits for discharges or potential discharges. Once an operation is defined as a CAFO under this SECTION, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal. Except as provided in subsection (d), all CAFO owners or operators must seek coverage under either an individual NPDES permit or a general NPDES permit under this document.**

(b) **The following definitions apply throughout this rule [document]:**

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

- (A) **Open lots.**
- (B) **Housed lots.**
- (C) **Feedlots.**
- (D) **Confinement houses.**
- (E) **Stall barns.**
- (F) **Free stall barns.**
- (G) **Milk rooms.**
- (H) **Milking center.**
- (I) **Cowyards.**
- (J) **Barnyards.**
- (K) **Medication pens.**
- (L) **Walkers.**
- (M) **Animal walkways.**
- (N) **Stables.**

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

(A) A lot or facility 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], (~~327 IAC 5~~), to be a single animal feeding operation if they the operations adjoin each other or if they the operations use a common area or system for the disposal of wastes.**

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

- (A) **A large CAFO.**
- (B) **A medium CAFO.**
- (C) **Designated as a CAFO by the commissioner under subsection (c).**
- (~~A~~) **More than the numbers of animals specified in any of the following categories are confined:**

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

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

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

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

(4) "CFO approval" means a valid approval issued by the commissioner under 327 IAC 16.

(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:
- (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; and
- (B) one (1) of these conditions are met:
- (i) pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
 - (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 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 SECTION 14 of this document.

SECTION 2. The purpose of this document is to establish an NPDES general permit for CAFOs. In addition to the requirements of 327 IAC 15 for all general permits, this document establishes the requirements for CAFOs in Indiana.

SECTION 3. The definitions contained in IC 13-11-2, 327 IAC 5-1.5, SECTION 1 of this document, and 327 IAC 15-1-2 apply throughout this document. In addition to those definitions, the following definitions [sic.] apply throughout this document: “NRCS 590 standard” means the Indiana Natural Resources Conservation Service (NRCS) Nutrient Management Conservation Practice Standard, Code 590, July 2001.

SECTION 4. (a) This rule [document] applies to all CAFOs or AFOs designated as CAFOs, under SECTION 1(c) of this document, located within the permit boundary set forth in SECTION 7 of this document. All CAFO owners or operators must seek coverage under this document or through an individual NPDES permit, except as provided in subsection (d).

(b) Any owner or operator covered by this document can request to be excluded from coverage under this general permit document 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 document.

SECTION 5. (a) An owner or operator of:

(1) a proposed CAFO;
(2) an AFO or CFO that has an increase in the number of animals as a result of construction such that it becomes a CAFO; or
(3) an existing CAFO that would otherwise be required to obtain an approval amendment under 327 IAC 16-6-1(c); that seeks coverage under this rule *[document]* must submit an NOI that meets the requirements of SECTION 9 of this document.

(b) The NOI must also contain all the information required under 32 IAC 16-7-2 and the operation must comply with the design and construction requirements of 327 IAC 16-5 and 16-8 *[327 IAC 16-8]*.

(c) A CAFO subject to this SECTION may not begin construction until the department provides written notification that the NOI contains all required information and is complete. In accordance with IC 13-18-10-2.2, a permittee must begin construction within two (2) years and complete construction within four (4) years of receiving approval to construct.

(d) The owner or operator shall notify the department prior to commencement of construction on a new waste management system or structure.

(e) Within thirty (30) days of completion of construction of a waste management system or structure, and prior to the introduction of animals into the newly constructed system or structure, the owner or operator shall submit an affidavit to the commissioner certifying that the system or structure was constructed and will be operated in accordance with this document. The owner or operator shall also submit the as-built plans, if changed from what was originally submitted, for the waste management system or structure with the affidavit.

(f) An owner or operator that meets the requirements of this SECTION satisfies the requirement to obtain a construction approval under 327 IAC 16.

SECTION 6. (a) An owner or operator that submits an NOI to construct on land that is undeveloped or for which a valid existing CFO approval or NPDES permit has not been issued shall make a reasonable effort to provide notice to:

(1) each person who owns land that adjoins the land on which the confined feeding operation is to be located; or
(2) all occupants of the land, if a person who owns land that adjoins the land which the confined feeding operation is to be located does not occupy the land; and
(3) the county commissioners of the county in which the confined feeding operation is to be located; not more than ten (10) working days after submitting the NOI. The notice must be sent by mail, be in writing, include the date on which the NOI was submitted to the department, and include a brief description of the subject of the NOI. The applicant shall pay the cost of complying with this SECTION. The applicant shall submit an affidavit to the department that certifies that the applicant has complied with this SECTION.

(b) Upon notification by the department that an individual permit is required, the owner of *[sic.]* operator shall comply with subsection (a) in regards to notice of the individual NPDES permit application.

(c) For all first time submissions of NOIs, including operations subject to subsection (a), the department shall publish a notice in the newspaper with the largest circulation in the county after receiving an initial NOI. The notice will request comments be submitted to the department on the eligibility of the owner or operator submitting the NOI for a general permit.

(d) An owner or operator proposing to construct or modify a CAFO, such that the operation will maintain more than twenty (20) times any of the animal numbers listed at 327 IAC 1-2-5, shall meet the requirements of subsection (a) and be subject to the requirements of 327 IAC 16-7-13 regarding public notice.

(e) The department shall provide notice of receipt of an NOI for a CAFO subject to subsection (d) to:

- (1) the owner or operator in writing; and
- (2) the public through notice in a newspaper as required by subsection (c).

SECTION 7. All CAFOs, or AFOs designated as CAFOs under SECTION 1(c) of this document or 40 CFR 122.23(c), within the boundaries of the state are regulated by this document.

SECTION 8. (a) Qualifying for this general permit document 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.

SECTION 9. (a) The owner or operator of a CAFO shall submit a notice of intent (NOI) to be covered by this document, 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 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 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 to IDEM, IDEM shall do the following:

- (1) Review the NOI for completeness and applicability under this document.
- (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 document 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 document;
 - (B) does not qualify for the general permit under this document; 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 document to apply for and obtain an individual NPDES permit.

(f) Compliance with the NOI submission requirements under this document may not be transferred. If ownership of a facility is transferred to a new person, that person must submit a NOI 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.

SECTION 10. (a) The following are required to submit a 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 document.

(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 document 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 commissioner under this subsection shall submit a 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 within ninety (90) days of the effective date of this document.

(d) Operations designated as a CAFO in accordance with SECTION 1(c) of this document or 40 CFR 122.23(c) must submit a NOI no later than ninety (90) days after receiving the notice of designation.

SECTION 11. (a) In addition to the conditions set forth in this document, 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.

(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 board of animal health at 345 IAC 7-7-3.

SECTION 12. The following are specific permit conditions that apply to all CAFO NPDES general permits. Permit holders must:

(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 fifteenth of each year for the previous calendar [*sic.*] 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.

(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 document and implement the plan within three (3) years after the effective date of this document. 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 land owner 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>.

SECTION 13. (a) The permittee shall allow the commissioner or an authorized representative, upon presentation of credentials, to enter upon the premises where a regulated facility or activity is located, have access to and copy any records that must be kept under the conditions of this document, in accordance with 327 IAC 15-4-1(l).

(b) The conditions of this document are subject to enforcement pursuant to 327 IAC 15-4-1 and IC 13-30.

SECTION 14. (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 information required under SECTION 9 of this document. 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.

SECTION 15. (a) Coverage under this document is granted by the commissioner for a period of five (5) years from the date coverage commences.

(b) Coverage commences on the date that a timely and complete NOI is submitted to the department.

(c) To obtain renewal of coverage under this general permit document, the information required under SECTION 9 of this document shall be submitted to the commissioner no later than forty-five (45) days prior to the expiration of coverage under this document 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; or
(2) the individual permit is issued or denied by the commissioner.

SECTION 16. (a) CAFOs subject to this document are required to meet the effluent limitations contained in 40 CFR 412*.

(b) Compliance with general and specific permit conditions as required by SECTIONS 11 and 12 of this document 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 document 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.**

SECTION 17. This document expires May 6, 2004.

LSA Document #04-38(E)

Filed with Secretary of State: February 6, 2004, 10:45 a.m.