

**MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

**GENERAL PERMIT
FOR
CONCENTRATED ANIMAL FEEDING OPERATIONS**

Permit No. MTG010000

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

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

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

This permit shall become effective: **November 1, 2013**

This permit and the authorization to discharge shall expire at midnight, **October 31, 2018.**

FOR THE MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY



Bob Habeck, Chief
Water Protection Bureau
Permitting & Compliance Division

Issuance Date: 9-6-13

COPY

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1 PERMIT AREA AND COVERAGE

1.1 Permit Area

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

1.2 Sources Eligible for Coverage

Owners or operators of animal feeding operations that meet the definition of a concentrated animal feeding operation (CAFO) as defined at 40 Code of Federal Register (CFR) 122.23 or are designated by the Department pursuant to Administrative Rules of Montana (ARM) 17.30.1330 are eligible for coverage under this general permit. Once an operation is defined as a CAFO, the Montana Discharge Elimination System (MPDES) requirements for CAFOs apply to all animals in confinement at the operation and to all manure, litter and process wastewater generated by those animals or by the production of those animals, regardless of the type of animal.

The CAFO must be located within the permit area defined in Part 1.1 of this permit.

1.3 Limitations on Coverage

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

- (a) any new large swine, poultry or veal calf operations subject to new source performance standards at 40 CFR 412.46 and CAFOs applying for coverage under 40 CFR 412.31(a)(2) Voluntary Alternative Performance Standards
- (b) CAFOs that cannot comply with any applicable effluent standards, effluent limitations, standards of performance for new sources of pollutants, toxic effluent standards and prohibitions, and pretreatment standards
- (c) CAFOs that do not meet the adequate storage requirements for manure, litter and process wastewater given in Part 4.1.7 of this permit
- (d) CAFOs that do not meet the minimum ground water protection practices specified in Part 4.3 of this permit
- (e) CAFOs that cannot comply with any applicable water quality standards established in Title 17, Chapter 30, Subchapter 6 and Subchapter 10
- (f) CAFOs that have discharges to which the regional administrator of the Environmental Protection Agency (EPA) has objected in writing;
- (g) CAFOs that the Department has notified to apply for an individual permit per Part 1.5 of this general permit.

1.4 Application for Coverage

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

- (a) submit a complete Notice of Intent (NOI) that meets the requirement of 40 CFR 122.21(i)(1) and provides the following additional information:
- (i) area of the production facility, in acres;
 - (ii) is the receiving water on the 303d list for nutrients;
 - (iii) the number of days of containment storage;
- (b) submit a complete Nutrient Management Plan (NMP) that meets the requirements of Part 4.1 of this permit; and
- (c) submit the appropriate application fee as required by 75-5-803, MCA.

CAFO owners or operators covered by the expiring general permit that wish to have continuous permit coverage must submit a complete NOI, NMP and, the applicable fee, to the Department by **November 1, 2013**.

CAFO owners or operators not covered under an MPDES permit may submit an NOI on or after **November 1, 2013**. However, authorization to discharge will not be granted until after the effective date of this permit. Regardless of when the NOI is submitted, the CAFO's authorization under this permit is only for discharges that occur after permit coverage is granted.

The NOI and NMP must be signed by the owner or operator of the CAFO in accordance with signatory requirement in Part 5.11 of this permit.

Submit the required forms and fee to:

Department of Environmental Quality (DEQ)
Water Protection Bureau
P.O. Box 200901
Helena, MT 59620-0901

The Department will review the NOI and NMP for completeness. If necessary, the Department may request additional information from the CAFO to clarify, modify, or supplement previously submitted material. If the Department makes a preliminary determination that the NOI is complete, the NMP will be made available for a thirty (30) day public review and comment period. The NOI and NMP will be posted on the Department's website. The Department will respond to any significant comments received during the comment period as specified in ARM 17.30.1377 and, if necessary, require the CAFO owner or operator to revise the NMP. If the Department determines that the NOI and NMP are complete and sufficient, the Department will provide written notification to the CAFO granting an authorization to discharge under this general permit. The Department will identify the terms of the NMP to be incorporated into the permit in the written authorization.

1.5 Requiring an Individual Permit

An operation that meets the definition of a CAFO, and other applicable requirements, must be

authorized by the Department under a general permit, unless, upon review of the NOI or the facility's NMP, DEQ discovers site-specific information that indicates that coverage will not sufficiently protect water quality (75-5-802, MCA).

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

- (a) the facility is unable to comply with the terms and condition of this permit; or
- (b) the Department determines that discharge causes or contributes to a violation of water quality standards adopted by the Board of Environmental Review under ARM 17.30.601 et seq.

The Department will notify the operator, in writing, that an application for an individual permit is required and will set a deadline for submitting the application. Coverage under this general permit is automatically terminated if the operator fails to submit the required individual MPDES permit application by the deadline or when the Department issues an individual MPDES permit for the facility.

Any owner or operator covered under this general permit may request to be excluded from the coverage under this general permit by applying for an individual permit. The owner or operator shall submit an application for an individual permit (Form 2B and Form NMP) with the reasons supporting the application to the Department. If a final individual MPDES permit is issued to an owner or operator otherwise subject to this general permit, the applicability of this general permit to the facility is automatically terminated on the effective date of the individual MPDES permit. Otherwise, the applicability of this general permit to the facility remains in full force and effect.

1.6 Permit Expiration

This permit will expire 5 years from the effective date. The owner or operator must reapply for permit coverage 180 days before the expiration of this permit unless the permit has been terminated consistent with 40 CFR 122.64(b) or the CAFO will not discharge or propose to discharge upon expiration of the permit. If this permit is not reissued or replaced before the expiration date, it will be administratively continued in accordance with the ARM 17.30.1312 and remain in force and effect. Any facility that is granted permit coverage before the expiration date will automatically remain covered by the continued permit until the earlier of any of the following:

- (a) reissuance or replacement of this permit, at which time the permittee must comply with the NOI conditions of the new permit to maintain authorization to discharge;
- (b) issuance of an individual permit for the permittee's discharges;
- (c) a formal decision by the Department not to reissue this general permit, at which time the permittee must seek coverage under an individual permit; or
- (d) the Department grants the permittee's request for termination of permit coverage.

1.7 Change in Ownership

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

- (a) The current owner or operator notifies the Department at least 30 days prior to the proposed transfer date using Form Permit Transfer Notification (PTN).
- (b) The notice includes a written agreement between the existing and new owner or operator containing a specific transfer date for permit responsibility, coverage, and liability.
- (c) The Department does not notify the existing owner or operator and the new permittee of the Department's intent to modify or revoke and reissue the permit.

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

If the new CAFO owner or operator modifies any part of the NMP, the NMP must be submitted to the Department in accordance with Part 1.4 of this permit.

1.8 Terminating Permit Coverage

Owners or operators may also seek to be excluded from coverage under this permit by either submitting to the Department a written notice [Notice of Termination] or by applying for an individual MPDES permit in accordance with Part 1.5 of this permit. The written notice must include a reason for the request and be signed and certified by the owner or operator of the CAFO in accordance with the signatory requirements in Part 5.11 of this permit.

Coverage under this permit may be terminated in accordance with ARM 17.30.1365 or if the Department determines in writing that one of the following three conditions is met:

- (a) The facility has ceased all operations and all wastewater or manure storage structures have been properly closed following the procedures outlined in the Natural Resource Conservation Service (NRCS) Conservation Practice Standard No. 360 and all remaining stockpiles of manure, litter, or process wastewater not contained in a wastewater or manure storage structure are properly disposed in accordance with 4.2.
- (b) The facility is no longer a CAFO that discharges manure, litter, or process wastewater to state waters.
- (c) The entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (POTW) in accordance with ARM 17.30.1365.

2 EFFLUENT LIMITATIONS AND OTHER CONDITIONS

The effluent limitations and standards given in Part 2.1 and 2.3 apply to all facilities covered by this permit. The effluent limitations and standards given in Part 2.2 apply to large CAFOs as defined in Part 6 of this permit.

2.1 Effluent Limitations and Standards – Production Area

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

- (a) the production area is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event; and
- (b) for large CAFOs, the production area is operated in accordance with the additional measures and record-keeping requirements specified in Part 2.2 of this permit.

2.2 Additional Measures for Large CAFOs – Production Area

In addition to the requirements of Part 2.1, large CAFOs must implement the additional measures in Parts 2.2.1 through 2.2.5, below.

2.2.1 Visual Inspections

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

- (a) weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water into the wastewater and manure storage and containment structure(s);
- (b) daily inspection of water lines, including drinking water or cooling water lines; and,
- (c) weekly inspections of the manure, litter, and process wastewater impoundments. The inspection must note the level in liquid impoundments as indicated by the depth marker in Part 2.2.2.

2.2.2 Depth Marker

All open surface liquid impoundments must have a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation from a 25-year, 24-hour rainfall event.

2.2.3 Corrective Actions

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

2.2.4 Mortality Handling

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

2.2.5 Record keeping requirements

Each CAFO must maintain on-site for a period of five years from the date they are created a complete copy of the information required by Parts 4.1.5 and 4.1.6 of this permit and the following records:

- (a) records documenting the inspections required under Part 2.2.1;
- (b) weekly records of the depth of the manure and process wastewater in the liquid impoundment as indicated by the depth marker under Part 2.2.2;
- (c) records documenting any actions taken to correct deficiencies required under Part 2.2.3. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction;
- (d) records of mortalities management and practices used by the CAFO to meet the requirements of Part 2.2.4;
- (e) records documenting the current design of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity; and
- (f) records of the date, time, and estimated volume of any overflow.

The CAFO must make these records available to the Department upon request.

2.3 Effluent Limitations and Standards – Land Application Area

There shall be no discharge from the land application area during dry weather. In addition, each CAFO authorized by this permit that land applies manure, litter, or process wastewater must do so in accordance with the best management practices (BMPs) and record keeping requirements specified in 2.3.1 and 2.3.2, below.

2.3.1 Best management practices

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

- (a) The CAFO must develop and implement a NMP that incorporates items (b) through (e) of this section based on a field-specific assessment that evaluates the potential for nitrogen and phosphorus transport from the land application field(s) and that address the form, source, amount, timing, and method of application of nutrient on each field to achieve realistic production goals while minimizing nitrogen and phosphorus movement into surface water. The NMP must be developed in accordance with the requirements of (b) through (e) this section and requirements in Part 4.1 of this permit.
- (b) Application rates for manure, litter, and process wastewater applied to land under the ownership or operational control of the CAFO must minimize nitrogen and phosphorus

transport from the field into surface water in accordance with technical standards given in ARM 17.30.1334. These standards must be incorporated into the CAFO's site-specific NMP.

(c) Manure must be analyzed a minimum of once annually for nitrogen and phosphorus content and the soil must be analyzed a minimum of once every five years for phosphorus content. The results of these analyses must be used in determining the application rates for manure, litter, or process wastewater.

(d) The operator must periodically inspect equipment used for land application of manure, litter, or process wastewater.

(e) Manure, litter, and process wastewater must not be applied closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sink holes, agricultural well heads, or any other conduits to surface waters unless the permittee demonstrates in the site-specific NMP that the following compliance alternatives are protective of water quality:

(i) the CAFO may substitute the 100-foot setback with a 35-foot wide vegetated buffer where applications of manure, litter or process wastewater are prohibited;
or

(ii) the CAFO may demonstrate that a set-back or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback.

2.3.2 Record keeping requirements

Each CAFO authorized by this permit must maintain on-site a copy of its site-specific NMP. Each CAFO must maintain on-site for a period of five years from the date they are created a complete copy of the information required by Part 2.3.1 and 4.1 of this permit and the following records:

- (a) expected crop yields;
- (b) the date(s) that manure, litter, or process waste water is applied to each field;
- (c) weather conditions at time of application and for 24 hours prior to and following application;
- (d) test methods used to sample and analyze manure, litter, process wastewater, and soil;
- (e) results from the manure, litter, process wastewater, and soil sampling;
- (f) explanation of the basis for determining manure application rates, as provided in the technical standards established in ARM 17.30.1334;
- (g) calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater;
- (h) total amount of nitrogen and phosphorus actually applied to each field, including

- documentation of calculations for the total amount applied;
- (i) the method used to apply the manure, litter, or process wastewater; and
 - (j) date(s) of manure application equipment inspection.

The CAFO must make these records available to the Department upon request.

3 MONITORING AND REPORTING REQUIREMENTS

3.1 Notification of Discharge

If for any reason there is a discharge of pollutants from the permitted facility, the permittee shall notify the Department orally within 24 hours from the time the permittee becomes aware of the discharge. Oral notification shall be reported to the Department's Water Protection Bureau at (406) 444-3080. If the discharge occurs on a weekend or holiday, the permittee shall leave a message describing the circumstances of the discharge.

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

- (a) a description of the discharge and its cause, including a description of the flow path to state waters,
- (b) and an estimate of the volume and duration of the discharge.
- (c) the period of discharge, including exact dates and times; and
- (d) if the discharge is from an unpermitted location (noncompliance), the steps taken or planned by the permittee to reduce, eliminate, and prevent recurrence of the discharge.

3.2 Annual Report

The permittee shall submit an annual report (AR2) to the Department at the address given in Part 1.4 of this permit by no later than January 28th of each year. The AR2 shall cover the previous calendar year. The annual report must be submitted using Form AR2, provided in Appendix B of this permit. All information requested in the AR2 must be included, as applicable. The annual report must include the following information:

- (a) the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, and other);
- (b) the estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- (c) the estimated amount of total manure, litter, and process wastewater transferred to other person(s) by the CAFO in the previous 12 months;
- (d) the total number of acres for land application covered by the NMP developed in accordance with Part 4.1 of this permit;
- (e) the total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months;
- (e) a summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including the date, time,

and approximate volume;

- (f) the actual crops planted and the actual yields for each field for the preceding 12 months;
- (g) the actual nitrogen and phosphorus content for manure, litter and process wastewater;
- (h) the results of calculations conducted in accordance with Part 4.1.6 (linear or narrative protocol) of this permit;
- (i) the amount of manure, litter, and process wastewater applied to each field during the preceding 12 months; and,
- (j) the results of any soil testing for nitrogen and phosphorus conducted during the preceding 12 months;
- (k) the data used in calculations conducted in accordance with Part 4.1.6 of this permit; and,
- (l) the amount of any supplemental fertilizer applied during the preceding 12 months.

3.3 Discharge from Production Area

In the event of any overflow or any other discharge of pollutants from the production area, including waste control structures, whether or not the discharge is authorized by this permit, the permittee shall take the following steps:

- (a) the permittee shall sample and analyze the discharge for the following parameters: *Escherichia coli* bacteria, total ammonia nitrogen (NH₃-N plus NH₄-N) as N, total nitrogen (as nitrogen), total phosphorus, five-day biochemical oxygen demand (BOD₅), and total suspended solids (TSS). The analyses shall be conducted according to test procedures approved under Part 136, Title 40 of the Code of Federal Regulations;
- (b) provide notification to the department, as required in Part III.A.1 of this permit;
- (c) record the duration of the discharge (in days) and estimated volume of the discharge;
- (d) if the discharge was a result of precipitation, a record of the total precipitation at the official gage station identified within the permittee's authorization letter under this general permit, or at an on-site rain gauge, for the period of weather that resulted in the discharge;
- (e) if conditions are not safe for sampling the discharge, the permittee must provide documentation of why samples could not be collected and analyzed. The permittee may be unable to take samples during dangerous weather conditions, such as local flooding, high winds, electrical storms, etc. However, after the dangerous conditions have passed, the permittee shall collect a sample from the waste control structure or area from which the discharge occurred; and,
- (f) the permittee shall submit the information required in this section on a discharge monitoring report (DMR) form (EPA Form No. 3320-1) provided by the Department. The DMR form must be submitted to the Department by January 28 of each year for the

previous calendar year. *If no discharge occurs during the entire monitoring period, it shall be stated on the DMR form.* The DMR form shall be signed and certified in accordance with Part V.N of this permit.

3.4 Ground Water Monitoring

The Department may require the permittee to monitor ground water in the vicinity of the facility if any component of the production area constitutes a potential source of pollution to state ground water. Monitoring may be required in areas having shallow ground water or soils materials in the unsaturated zone with low filtering capacity. The Department shall specify any ground water monitoring requirements, including parameters, in the facility's letter of authorization. Ground water sample, analysis and reporting is subject to the monitoring and reporting provision of this permit, including conformance with 40 CFR 136 procedures. Ground water monitoring may be required by the Department regardless of whether or not a discharge of pollutants occurs.

If ground water monitoring is required, at minimum, the following parameters must be included in the analysis:

- (a) nitrate + nitrite, as N;
- (b) Kjeldahl nitrogen, total, as N;
- (c) residue, filterable (total dissolved solids); and,
- (d) chloride.
- (e) Ammonia NH_4
- (f) Specific Conductance

4 SPECIAL CONDITIONS

4.1 Nutrient Management Plan

CAFO owner or operators seeking coverage under this general permit must submit a nutrient management plan (NMP) with the NOI, as required by Part 1.4 of this permit. The NMP shall specifically identify and describe the practices that will be implemented to assure compliance with the effluent limitations set forth in Part 2 of this permit and other conditions of this permit. The NMP must be developed in accordance with ARM 17.30.1334 and must be completed on the form NMP provided in Appendix C of this permit.

The CAFO must implement the terms of the NMP upon authorization by the Department and in accordance with the terms of the NMP specified in Part 4.1.6 of this permit.

The completed and signed copy of the NMP constitutes the facility's NMP. A current copy of the NMP shall be kept on site and provided to the Department upon request.

4.1.1 Department Procedures for Review of NMP

Upon receipt, the Department will review the NOI and NMP to ensure that the NOI and NMP are complete. The Department may request additional information from the CAFO owner or operator if additional information is necessary to complete the NOI and NMP or to clarify, modify, or supplement previously submitted material. If the Department makes a preliminary determination that the NOI is complete, the NMP will be made available for a thirty (30) day public review and comment period. The NMP will be posted on the Department's website. The Department will respond to any significant comments received during the comment period as specified in ARM 17.30.1377 and, if necessary, require the CAFO owner or operator to revise the NMP. If determined appropriate by the Department, CAFOs will be granted coverage under this general permit upon written notification by Department. The Department will identify the terms of the NMP to be incorporated into the permit in the written notification.

When the Department authorizes coverage of the CAFO owner or operator under the general permit, the terms of the NMP shall become incorporated as terms and conditions of this permit for the CAFO. The Department shall notify the CAFO owner or operator that coverage has been authorized and that the terms of the NMP are incorporated as terms and conditions of the permit that are applicable to the CAFO.

4.1.2 Content of the Nutrient Management Plan

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

- (a) ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure the proper operation and maintenance of the storage facilities;
- (b) ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or

- treatment system that is not specifically designed to treat animal mortalities;
- (c) ensure that clean water is diverted, as appropriate, from the production area;
 - (d) prevent direct contact of confined animals with state waters;
 - (e) ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
 - (f) identify appropriate site-specific conservation practices to be implemented, including the use of appropriate buffers or equivalent practices, to control the runoff of pollutants into state waters;
 - (g) identify protocols for the appropriate testing of manure, litter, process wastewater, and soil in accordance with Part 4.1.7 of this permit;
 - (h) establish protocols to land apply manure, litter or process wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater in accordance with Part 4.1.6 of this permit; and
 - (i) identify specific records that will be maintained in order to document the implementation and management of the minimum elements described in Part 4.1.6 of this permit.

4.1.3 Recordkeeping requirements

The permittee must create, maintain for five years, and make available to the Department, upon request, the following records:

- (a) all applicable records identified pursuant Part 2.2.5 of this permit;
- (b) all applicable records identified pursuant Part 2.3.2 of this permit; and
- (c) all applicable records identified pursuant to Parts 4.1.4 and 4.1.5 of this permit.

A copy of the site-specific NMP must be maintained on and made available to the Department upon request.

4.1.4 Transfer of Manure or Process Wastewater to Other Persons

Prior to transferring manure, litter, or process wastewater to other persons, the CAFO must provide the recipient of the manure, litter, or process wastewater with the most current nutrient analysis. The analysis must specify the nitrogen and phosphorus content of the manure, litter, and process wastewater based on the current calendar year using the testing procedures given in Part 4.1.7 of this permit. CAFOs must retain for five years records of the date, recipient name, and address, and the approximate amount of manure, litter, or process wastewater transferred to another person.

4.1.5 Annual Reporting Requirements

The CAFO must comply with the annual reporting requirements given in Part 3.2 of this permit.

4.1.6 Terms of the Nutrient Management Plan

The terms of the NMP are the information, protocols, best management practices, and other conditions in the NMP determined by the Department as necessary in order to meet the requirements of Part 4.1.2 of this permit. The terms of the NMP with respect to the protocols for the land application of manure, litter, or process wastewater, required by Part 4.1.2(h) and Part 2.3 of this permit, must include the fields available for land application; field-specific rates of application properly developed as specified in Part 4.1.7 of this permit to ensure the appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the NMP concerning land application on the fields available for land application. The terms of the NMP must address the rates of application using one of the two approaches (linear or narrative) given in this Part.

Linear Approach

The linear approach expresses rates of application as pounds of nitrogen and phosphorus as determined in (a) through (f). The terms include the maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the NMP, in the chemical forms given in Part 4.1.7 of this permit, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms must include:

- (a) the outcome of the field-specific assessment for the potential for phosphorus transport from each field using the protocol described in Part 4.1.7 of this permit;
- (b) the crops to be planted in each field or any other uses of a field such as pasture or fallow fields;
- (c) the expected crop yield (goal) for each crop or use identified in (b) above;
- (d) the nitrogen and phosphorus recommendations based on a nutrient needs analysis for each crop based on the appropriate basis (nitrogen- or phosphorus-based application) using the procedure described in Part 4.1.7;
- (e) the nitrogen and phosphorus recommendations must account for all sources of nutrients, including the nitrogen reduction credit due to legumes, mineralization of manure, litter and process wastewater, commercial fertilizer, irrigation water and other sources, and any adjustment for method of application; and
- (f) for any fields for which a multiyear phosphorus application is considered (nitrogen-based application), application rates based in the protocols given in Part 4.1.7.

In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

CAFOs that use this approach must calculate the maximum amount of manure, litter, and process

wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater analysis for nitrogen and phosphorus taken within 12 months of the date of land application.

Narrative Rate Approach

The narrative approach expresses the rates of application as a narrative rate of application resulting in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the specifications in (g) through (l). The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the NMP, in chemical forms given in Part 4.1.7, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms must include:

- (g) the outcome of the field-specific assessment for the potential for nitrogen and phosphorus transport from each field using the method described in Part 4.1.7 of this permit;
- (h) the crops to be planted in each field or any other uses of a field such as pasture or fallow fields (including alternative crops identified in the NMP);
- (i) the expected crop yield (goal) for each crop or use identified in (h) above; and
- (j) the nitrogen and phosphorus recommendations based on a nutrient needs analysis for each crop based on the appropriate basis (nitrogen- or phosphorus-based application) using the procedure described in Part 4.1.7.

In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: the results of soil tests conducted in accordance with protocols identified in the NMP, as required by Part 4.1.7; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and the volatilization of nitrogen and mineralization of organic nitrogen.

The terms of the nutrient management plan may include alternative crops as identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its NMP, the alternative crops must be listed in addition to the crops identified in the planned crop rotation for that field, and the NMP must include expected crop yield and the nitrogen and phosphorus recommendations from sources identified in Part 4.1.7. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied must be determined in accordance with the methodology described in Part 4.1.7 of this permit.

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

CAFOs that use the narrative approach must calculate the maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in Part 4.1.7 prior to land-applying manure, litter, and process wastewater the narrative rate approach rely on the following data:

- (k) a field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology given in Part 4.1.7, and, for phosphorus the results of the most recent soil test conducted in accordance with soil testing requirements given in Part 4.1.7; and
- (l) the results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

4.1.7 Technical Standards for NMP

To ensure the CAFO has adequate storage for all manure, litter and process wastewater generated from the production area, and to ensure that these wastes are land applied in a manner that ensure appropriate agricultural utilization of the nutrients the CAFO's NMP must be based on the specific technical standards identified in this section and ARM 17.30.1334.

Adequate Storage of Manure, Litter, and Process Wastewater – Production Area

The CAFO's waste containment structure must be designed, operated and maintained as follows:

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

(f) a minimum of one foot of freeboard.

The CAFO must provide the basis for all estimates and calculations for the waste storage structure(s) on the NMP form.

The production area is properly designed, constructed, operated and maintained to contain all manure, litter, process wastewater and the runoff and direct precipitation from the 25-year, 24-hour storm event for the location of the CAFO.

'25-year, 24-hour rainfall event' mean precipitation events with a probability recurrence interval of once in twenty five years as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May, 1961, or equivalent regional or State rainfall probability information developed from this source. The permittee has the option of maintaining a comparable precipitation gage at the facility.

Protocols to Ensure Appropriate Agricultural Utilization of Nutrients

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

(a) The field-specific assessment must be based on the phosphorus index assessment method described in United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), No. 80.1 Nutrient Management, Agronomy Technical Note MT-77 (revision 3), January 2006. The nutrient application basis is determined as follows:

- (i) nitrogen-based application if the site vulnerability rating is low (total phosphorus index value is less than 11);
- (ii) phosphorus-based if the site vulnerability rating is medium (total phosphorus index value is between 11 and 21);
- (iii) phosphorus-based application up to crop removal if the site vulnerability rating is high (total phosphorus index value is between 22 and 43); or
- (iv) no application of if the site vulnerability rating is rated as very high (total phosphorus index value is greater than 43).

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

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

- 25.1 mg/L and less than 100 mg/L;
- (iii) phosphorus-based up to crop removal if the Olsen phosphorus soil test is greater than 100.1 mg/L and less than 150.0 mg/L; or
- (iv) no application if the Olsen phosphorus soil test is greater than 150 mg/L.

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

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

- (c) nitrogen reduction credits if a legume crop was grown in the field in the previous year(s) as given in ARM 17.30.1334(3)(c);
- (d) the nitrogen needs must be reduced based on the nitrogen residual from past manure application and nitrogen mineralization rates as given in ARM 17.30.1334(3)(c);
- (e) the nutrient needs must be reduced based on any commercial fertilizer applied, irrigation water, or other sources of nutrients; and
- (f) nitrogen availability may be adjusted to reflect the method of application as given in ARM 17.30.1334(3)(c).

A multi-year phosphorus application is allowed for fields that require a nitrogen-based application based on a site-specific assessment (site vulnerability rating less than 22) as described in ARM 17.30.1334(9).

As an alternative to the manure application rates based on the criteria given in this part, the CAFO may develop application rates for manure based on United States Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Conservation Practice Standard, Code 590, November 2006 following the procedures given in ARM 17.30.1334(10).

Testing Procedures

Manure, litter, and process wastewater that is land applied must be sampled at least once per year and analyzed for total nitrogen (as N), ammonium nitrogen (as $\text{NH}_4\text{-N}$), total phosphorus (as P_2O_5), total potassium (as K_2O), and percent dry matter (solids). Except for percent dry matter, the results of this analysis must be expressed as pounds per 1,000 gallons for liquid wastes or as pounds per ton for solid manure. The sample must be representative of the manure that is to be

land-applied to a field and must be collected and analyzed in accordance with ARM 17.30.1334(4)(a) and (b).

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

(g) a composite soil sample must be collected from a depth of zero to six inches below the surface and analyzed for phosphorus using the Olsen soil test method. Results must be reported as mg/kg phosphorus and pounds per acre;

(h) a composite soil samples must be collected from a depth of zero to six inches below the surface and analyzed for total nitrogen (as N) and nitrate (as N). A second composite sample must be collected at a depth of six to 24 inches and analyzed for nitrate (as N) only. Results must be reported as mg/kg total nitrogen and pounds per acre.

Analytical laboratories approved for manure and soil testing are given in ARM 17.30.1334(6) and Montana State University Extension Service Publication 4449-1, Soil Sampling and Laboratory Selection, June 2005.

Timing of Application

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

- (i) on land that is flooded or saturated with water;
- (j) during or within 36 hours of a rainfall event that exceeds four hours in duration or 0.25 inches or more of precipitation; or
- (k) to frozen or snow-covered ground (winter application) except for fields meeting the following criteria:
 - (i) the application area must be at least 300 feet from lakes, stream, intermittent streams, irrigation canals and ditches, open intake structures, property lines and road right-of-ways;
 - (ii) permanent vegetative cover or standing stubble with crop residue greater than 50%; and
 - (iii) land slope of the field must not exceed the following criteria: six percent for application of solid manure (total solids content great than 15%); or, three percent for application of slurry or liquid waste (total solids content of 15% or less).

Calibration of Equipment

Manure application rates and procedures must be consistent with the capabilities, including

capacity and calibration range, of the application equipment.

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

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

If a commercial hauler is used, the hauler shall be responsible for ensuring that the equipment is capable of complying with the application rate in the NMP. The CAFO shall maintain the supporting documentation on-site and shall make this information available to the department upon request.

Multiyear Phosphorus Application Rate

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

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

4.1.8 Changes to the NMP

The CAFO owner or operator must provide the Department with the most current version of the CAFO's nutrient management plan and identify changes from the previous version, except that the results of calculations made in accordance with the following requirements. For the linear approach CAFOs calculating the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter and process wastewater test for nitrogen and phosphorus taken within 12 months of the date of land application. For the narrative rate approach CAFOs that calculate the maximum amounts of manure, liter, and process wastewater to be land applied at least once each year using the methodology require in paragraphs under narrative rate approach.

The Department must review the revised nutrient management plan to ensure that it meets the requirements of this section and the applicable effluent limitations and standards, including those

specified in ARM 17.30.1334. The Department will also determine whether the changes to the nutrient management plan necessitate revision to the terms of the NMP incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the Department must notify the CAFO owner or operator. Upon such notification the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the Department must determine whether such changes are substantial changes as described in this section.

If the Department determines that the changes to the terms of the nutrient management plan are not substantial, the Department must make the revised nutrient management plan publicly available, include it in the permit record, revise the terms of the nutrient management plan incorporated into the permit, notify the owner or operator and inform the public of any changes to the terms of the NMP that are incorporated into the permit.

If the Department determines that the changes to the terms of the NMP are substantial, the Department must notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public comments, hearing requests, and the hearing process if a hearing is held must follow the procedures applicable to draft permits set forth in 40 CFR 124.11 through 124.13. The Department may establish, either by regulation or in the CAFO's permit, an appropriate period of time for the public to comment and request a hearing on the proposed changes that differs from the time period specified in 40 CFR 124.10. The Department must respond to all significant comments received during the comment period as provided in 40 CFR 124.17, and they require the CAFO owner or operator to further revise the nutrient management plan if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit. Once the Department incorporates the revised terms of the NMP into the permit, the Department must notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:

- (a) Addition of new land application areas not previously included in the CAFO's nutrient management plan except if the land application area that is being added to the nutrient management plan is covered by terms of a nutrient management plan incorporated into an existing NPDES permit in accordance with the requirements of paragraph 4.1.6 of this section and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly added land application area. Such addition of new land would be a change to the new CAFO owner or operator's nutrient management plan but not a substantial change for purposes of this section;
- (b) Any changes to the field-specific maximum annual rates for land application, as set forth in paragraphs 4.1.6 of this section, and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in paragraph A.5.b of this section;

(c) Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application expressed in accordance with paragraph 4.1.6 of this section; and

(d) Changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to state water.

4.1.9 Signatory Requirement's

The NMP shall be signed by the permittee in accordance with Part 5.11 of this permit.

4.2 Facility Closure

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

4.2.1 Closure Criteria for Lagoons and Other Surface Impoundments

No lagoon or other earthen or synthetic lined basin shall be permanently abandoned. Lagoons and other earthen or synthetic lined basins shall be maintained at all times until closed in compliance with this section.

All lagoons and other earthen or synthetic lined basins must be properly closed if the permittee ceases operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of twelve consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either (1) maintains the structure as though it were actively in use, to prevent compromise of structural integrity, or (2) removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. The permittee shall notify the Department of the action taken, and shall conduct routine inspections, maintenance, and recordkeeping as though the structure were in use. Prior to the restoration of use of the structure, the permittee shall notify the Department and provide the Department the opportunity for inspection.

The following criteria apply to all closures of lagoons and other earthen or synthetic lined basins:

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

manure solids shall be removed to the fullest extent practical and either land-applied at agronomic rates or transferred to other persons in accordance with any applicable transfer requirements in 4.1.4 of this permit.

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

(d) Embankment Impoundments. Waste shall be removed from the site before the embankment is breached. The slopes and bottom of the breach shall be stable for the soil material involved, however the side slopes shall be no steeper than three horizontal to one vertical (3:1).

(e) Excavated Impoundments. The backfill height shall exceed the design finished grade by 5 percent to allow for settlement. The finished surface shall be constructed of the most clayey material available and mounded to shed rainfall runoff. Incorporate available topsoil where feasible to aid establishment of vegetation.

(f) Conversion to Fresh Water Storage. The converted impoundment shall meet all applicable state laws and regulations governing the impoundment of fresh water. When manure solids are not removed from a waste impoundment that is converted to fresh water storage, the impoundment shall not be used for fish production. Precautions (fencing and warning signs) shall be used to ensure that the pond is not used for incompatible purposes such as swimming and livestock watering until water quality is adequate for these purposes.

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

Unless otherwise authorized by the Department, the completion of closure for lagoons and other earthen or synthetic lined basins shall occur as promptly as practicable after the permittee ceases to operate; or, if the permittee has not ceased operations, 12 months from the date on which the use of the structure ceased unless the lagoons or basins are being maintained for possible future use in accordance with the requirements above.

4.2.2 Other Manure, Litter, or Process Wastewater Storage and Handling Structures

No other manure, litter, or process wastewater storage and handling structure shall be abandoned. Closure of all such structures shall occur as promptly as practicable after the permittee has ceased to operate, or, if the permittee has not ceased to operate, within 12 months after the date on which the use of the structure ceased. To close a manure, litter, or process wastewater storage

and handling structure, the permittee shall remove all manure, litter, or process wastewater and dispose of it in accordance with the permittee's NMP, or if applicable, document its transfer from the permitted facility in accordance with the off-site transfer requirements specified in Part III.B of this permit, "Transfer of Manure, Litter, and Process Wastewater," unless otherwise authorized by the Department.

4.3 Ground Water Protection

There shall be no discharge of manure, litter or process waste water from the production area to State waters area under the control of the CAFO owner or operator as included in ARM 17.30 subchapter 10. A "source" means any sewage, treatment works, point source, disposal system, concentration of pollutants, or pond containing process waste of pollutants used, employed, or operated so that the same results under normal operating conditions may reasonably expected to result in the discharge of pollutants to the ground water of the state as defined in ARM 17.30.1001 (15).

Waste containment structures must be sealed such that seepage loss through the seal is as low as practicably possible. Seals consisting of soils, bentonite, or synthetic liners may be considered provided the permeability, durability, and integrity of the proposed material is satisfactorily demonstrated for the anticipated conditions. Results of a testing program that substantiate the adequacy of the proposed seal must be incorporated into and accompany the design report. Testing must take place at the maximum operation depth. Standard ASTM procedures or acceptable similar methods must be used for all tests. To achieve an adequate seal in systems using soil, bentonite, or other seal materials, the coefficient of permeability (k) in centimeters per second specified for the seal may not exceed $k = 3.0 \times 10^{-9}L$ where L equals the thickness of the seal in centimeters.

Finished elevations for soil and bentonite liners must not vary more than 3 inches from the average elevation of the bottom and should be as level as possible. Sloped pond bottoms are allowed for synthetic liners; however they must be uniformly sloped.

Waste Containment structure must also meet the following criteria;

- (a) A minimum separation of 10 feet between the pond bottom and any bedrock formation must be maintained.
- (b) A minimum separation of 4 feet between the pond bottom and any ground water; and
- (c) New wastewater containment structures or the manure and wastewater disposal sites must not be constructed within 500 feet of existing water well(s) per 75-5-605(c) MCA.

A facility may submit to the department site specific information demonstrating that the location of any wastewater containment structure will not be a source as defined in 17.30.1001(15)

5 STANDARD CONDITIONS

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

5.1 Duty to Comply

The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Montana Water Quality Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under ARM 17.30.1206 for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

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

75-5-632 MCA provides that any person who willfully or negligently violates a prohibition or permit condition is subject, upon conviction, to criminal penalties not to exceed \$25,000 per day or one year in prison, or both, for the first conviction, and \$50,000 per day of violation or by imprisonment for not more than two years, or both, for subsequent convictions.

75-5-611(9)(a) MCA also provides for administrative penalties not to exceed \$10,000 for each day of violation and up to a maximum not to exceed \$100,000 for any related series of violations

5.2 Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must first apply for and obtain a new permit.

5.3 Need to Halt or Reduce Activity Not a Defense

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

5.4 Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

5.5 Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

5.6 Permit Actions

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

5.7 Property Rights

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

5.8 Duty to Provide Information

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

5.9 Inspection and Entry

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

- (a) enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (b) have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (d) sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Montana Water Quality Act, any substances or parameters at any location.

5.10 Monitoring and Records

5.10.1 Representative Sampling

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

5.10.2 Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by the Department at any time.

5.10.3 Records Contents

Records of monitoring information must include:

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

5.10.4 Test Procedures

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

5.10.5 Falsification and Tampering

The Montana Water Quality Act at 75-5-633 MCA provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$25,000, by imprisonment for not more than six months, or by both.

5.11 Signatory Requirement

All applications, reports or information submitted to the Department shall be signed and certified. All permit applications must be signed as follows:

- (a) for a corporation, the application must be signed by a responsible corporate officer, which means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or, the manager of one or more

manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) for a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(c) for a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official. A principal executive office of a federal agency includes: the chief executive officer of the agency; or, a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

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

(a) the authorization is made in writing by a person described above;

(b) the authorization specifies either an individual or a position as having the responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent or position of equivalent responsibility, or an individual or position having the overall responsibility for environmental matters (a duly authorized representative may thus be either a named individual or an individual occupying a named position); and

(c) the written authorization is submitted to the Department.

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

Any person signing a document under this section shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

5.12 Reporting Requirements

5.12.1 Planned Changes

The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (a) The alteration or addition to the permitted facility may meet one of the criteria for determining whether a facility is a new source under ARM 17.30.1340(2); or
- (b) The alteration or addition may significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants that are subject either to effluent limitations in the permit, or to notification requirements under ARM 17.30.1343(1)(a).

5.12.2 Anticipated Noncompliance

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

5.12.3 Transfers

This permit is not transferable to any person except after notice to the Department. The Department may require modification or revocation and reissuance of the permit in order to change the name of the permittee and incorporate such other requirements as may be necessary under the Montana Water Quality Act. (See ARM 17.30.1360; in some cases, modification or revocation and reissuance is mandatory.)

In accordance with ARM 17.30.1360(2), this permit may be automatically transferred to a new permittee if:

- (a) the current permittee notifies the Department at least 30 days in advance of the proposed transfer date;
- (b) the notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- (c) the Department does not notify the existing permittee and the proposed new permittee of an intent to revoke or modify and reissue the permit. A modification may also be a minor modification under ARM 17.30.1362. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned above.

5.12.4 Monitoring Reports

Monitoring results shall be reported to the Department at the intervals specified in this permit.

Monitoring results must be reported on a Discharge Monitoring Report (DMR) form.

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this

additional monitoring must be included in the calculation and reporting of the data submitted to the Department in the Discharge Monitoring Report.

Calculations for all limitations that require averaging of measurements must use an arithmetic mean unless otherwise specified by the Department in this permit.

5.12.5 Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date unless otherwise specified by the Department.

5.12.6 Twenty-four Hour Reporting

The permittee shall report any noncompliance that might endanger health or the environment. Any information must be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:

- (a) a description of the noncompliance and its cause;
- (b) the period of noncompliance, including exact dates and times;
- (c) the estimated time noncompliance is expected to continue if it has not been corrected; and
- (d) steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The following are included as information that must be reported within 24 hours under this provision:

- (e) any unanticipated bypass that exceeds any effluent limitation in the permit of this permit (see ARM 17.30.1342(7) and "Bypass" below);
- (f) any upset that exceeds any effluent limitation in the permit (see "Upset" below); and
- (g) violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in this permit to be reported within 24 hours (see ARM 17.30.1344 and 40 CFR 122.44(g)).

The report shall be made orally to the Water Protection Bureau at (406) 444-3080 or the Office of Disaster and Emergency Services at (406) 324-4777.

The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours of the "incident" by the Water Protection Bureau. Written reports shall be submitted to the following address:

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

5.12.7 Other Noncompliance

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time discharge monitoring reports are submitted. The reports shall contain the information listed above for written submissions under 5.13.6

5.12.8 Other Information

When the permittee becomes aware of the failure to submit any relevant facts in a permit application, or the submission of incorrect information in a permit application or any report to the Department, the permittee shall promptly submit such facts or information.

5.13 Bypass

Bypass is defined as the intentional diversion of waste streams from any portion of a treatment facility. Severe property damage is defined as substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent damage to natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

The permittee may allow any bypass to occur that does not cause an exceedance of any effluent limitations but only if the bypass is for essential maintenance to assure efficient operation.

Anticipated Bypass - If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass.

Unanticipated Bypass - The permittee shall submit notice of an unanticipated bypass as required under 5.12.6 above.

Bypass is prohibited and the Department may take enforcement action against a permittee for a bypass, unless:

- (a) the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- (b) there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
- (c) the permittee submitted notices as required above.

5.14 Upset

Upset is defined as an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements outlined below under “Conditions Necessary for Demonstration of an Upset” below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

Conditions Necessary for a Demonstration of Upset - A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (a) an upset occurred and that the permittee is able to identify the cause(s) of the upset;
- (b) the permitted facility was at the time of the upset being properly operated;
- (c) the permittee submitted notice of the upset as required under “Reporting Requirements—Twenty-four Hour Reporting” above; and
- (c) the permittee complied with any remedial measures required under “Duty to Mitigate” above.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

5.15 Fees

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

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

6 DEFINITIONS

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

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

“Animal feeding operation” (AFO) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: animals that have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

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

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

“Department” means the Montana Department of Environmental Quality.

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

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

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

“EPA” means the United States Environmental Protection Agency.

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

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

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

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

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

“Land application area” means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied (40 CFR 122.23(b)(3)).

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

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

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

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

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

“Overflow” means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or storm water can be contained by the structure (40 CFR 412.2(g)).

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

“Process wastewater” means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

“Production area” means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included is the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

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

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

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

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

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

7 Appendices

7.1 Appendix A – Notice of Intent (NOI)

7.2 Appendix B – Nutrient Management Plan (NMP)

7.3 Appendix C – Annual Report Form (AR)