

DEPARTMENT OF ENVIRONMENTAL QUALITY
Environmental Assessment

Water Quality Division
Water Protection Bureau

Name of Project: Reissuance of the *General Permit for Concentrated Animal Feeding Operations*

Proposed Action: The proposed action is to reissue the Montana Pollutant Discharge Elimination System (MPDES) *General Permit for Concentrated Animal Feeding Operations*, MPDES Permit Number MTG010000 and subsequent authorizations under that permit. In this document, MPDES Permit Number MTG010000 is referred to as the “General Permit,” “CAFO GP,” or “MTG010000.”

Description of Project: The Montana Department of Environmental Quality (DEQ) is proposing to reissue the CAFO GP for a five-year permit cycle beginning November 1, 2023 and expiring on October 31, 2028. The CAFO GP is a general permit for land application and discharges of wastes from concentrated animal feeding operations (CAFOs). The draft fact sheet for the proposed reissuance is a reference document for this draft environmental assessment (EA) and provides an explanation for the proposed permitting approach.

Owners or operators of Montana animal feeding operations that meet the definition of a CAFO or are designated as a CAFO are eligible for coverage under the CAFO GP. An operation that meets the definition of a CAFO must be authorized by DEQ under a general permit, unless, if upon review of an application for a general permit authorization for a CAFO production area, DEQ discovers site-specific information that indicates that a general permit authorization is not sufficiently protective of water quality, in which case DEQ may require an individual permit. The procedure(s) for obtaining coverage under the CAFO GP are outlined in the CAFO GP.

The effluent limits and other terms and conditions included in the CAFO GP are based on the federal effluent limitations guidelines (ELGs) and State technical standards. For each facility permitted under the CAFO GP, the terms and conditions will also include the implementation of the facility’s site-specific nutrient management plan (NMP).

The CAFO GP requires permittees submit a notice of intent (NOI) and to develop an NMP. The NMP is included in the analysis for this EA because the CAFO GP specifies how a site-specific NMP is to be created, and therefore determines what terms and conditions it must include. The completed NMPs submitted by permit applicants will not need to be included in EAs completed for individual authorizations under the CAFO GP.

After an owner/operator submits a complete NOI and NMP to DEQ and DEQ makes a preliminary determination that the NOI is complete, the applicant’s completed Form NMP will be posted on DEQ’s website for public comment. As DEQ formulates its final response, it will consider all comments it receives.

The permittee is required to submit an updated NMP if there are any significant changes in the operation that render information provided in the permittee’s NMP either incomplete or obsolete. Such submittals would generally not trigger the need for additional review under MEPA or the need to reopen the public comment period.

DEQ does not intend to prepare Individual EAs for authorizations that meet both of the following conditions:

- The permittee currently has coverage under the November 1, 2018 CAFO GP; and
- The permittee is not proposing to create additional ground disturbance, construct buildings, structures or pens, or otherwise create new impacts to the physical or human environments in conjunction with receiving an authorization under the CAFO GP.

In all other instances, DEQ will prepare an Individual EA.

This EA has been prepared for the project described above, pursuant to the Montana Environmental Policy Act (MEPA). The CAFO GP allows DEQ to deny an authorization under the CAFO GP if a facility appears to be unable to comply with state water quality standards. The CAFO GP also contains a duty to comply, allowing DEQ to reopen and modify an authorization under the CAFO GP if it is found that water quality standards in the receiving stream or ground water are exceeded for parameters included in the permit. The CAFO GP sets forth substantial administrative, civil, and criminal penalties for violations of permit conditions, including termination of permit coverage, payment of penalties, and imprisonment.

Location of Project: Statewide (excluding Except A-1, A-Closed waterbodies, Indian Reservations, and National Parks)

Agency Action and Applicable Regulations: The proposed action is to reissue the CAFO GP. The CAFO GP is being issued by DEQ pursuant to its duties under 75-5-402 and 75-5-802, MCA of the Montana Water Quality Act. Applicable regulations include those found in Title 75, Chapter 5 of the MCA and those found in Title 17, Chapter 30 of the Administrative Rules of Montana, including all federal and state regulations, standards, and guidelines incorporated by reference therein.

Summary of Issues: Animal waste from CAFOs can be a large source of pollutants if allowed to discharge into state waters. The CAFO GP limits and standards, in conjunction with the other terms and conditions of the CAFO GP, represent the practices and prohibitions necessary for an eligible CAFO to prevent discharges of wastes from the production area to state waters. The core requirement for regulating CAFO discharges is the construction and maintenance of Livestock Waste Control Facilities and implementation of a Nutrient Management Plan for the use of the animal waste as fertilizer. DEQ outlines clear, specific, measurable and enforceable requirements for the CAFO GP and NMP. Although the permittee will adjust the NMP to site-specific conditions, the CAFO GP prescribes situations where the NMP must undergo additional public notice.

The CAFO GP allows the DEQ to deny an authorization under the CAFO GP if a facility appears to be unable to comply with state water quality standards. The CAFO GP also contains a reopener provision, allowing the DEQ to reopen and modify the CAFO GP if it is found that water quality standards in the receiving stream or ground water are exceeded for parameters included in the permit. Authorizations under the CAFO GP will only be issued after the DEQ has conducted a thorough review of required maps, records, descriptions and proposals submitted as part of the permit application process. The use of a general permit for discharges from CAFOs is required by 75-5-802, MCA. General permits provide a streamlined, cost-effective way to administer the MPDES permitting program while still ensuring the high degree of water quality protection mandated by State law. Issuance of the CAFO GP will put in place a regulatory mechanism for protecting the natural and human resources of the State of Montana from adverse impacts associated with the operation of CAFOs.

Affected Environment & Impacts of the Proposed Project:

Impacts on the Physical Environment	
Resource	[Y/N] Potential Impacts and Mitigation Measures
<p>1. Geology and Soil Quality, Stability and Moisture:</p> <p>Are soils present which are fragile, erosive, susceptible to compaction, or unstable?</p> <p>Are there unusual or unstable geologic features?</p> <p>Are there special reclamation considerations?</p>	<p>The CAFO GP includes the requirement to develop and implement an NMP. For facilities disposing of wastes via land application, the NMP specifies the amount, form, and timing of land application events. Wastes are required to be applied in accordance with agronomic rates. Such land applications can improve soil tilth and fertility, promoting vigorous plant growth and soil stabilization.</p> <p>Authorization under the CAFO GP does not prohibit or encourage impacts to unusual or unstable geologic features.</p> <p>When permit applicants propose new ground disturbance in conjunction with authorization under the CAFO GP, DEQ will conduct an individual EA. As part of the assessment process, DEQ will conduct a site-specific evaluation of the potential for negative impacts to geology and soil quality, stability, and moisture.</p>
<p>2. Water Quality, Quantity and Distribution:</p> <p>Are important surface or groundwater resources present?</p> <p>Is there potential for violation of ambient water quality standards, drinking water maximum contaminant levels, or degradation of water quality?</p>	<p>The CAFO GP is a tool for limiting negative impacts on water quality as a result of CAFO operations. The CAFO GP allows DEQ to deny an authorization under the CAFO GP if a facility appears to be unable to comply with state water quality standards.</p> <p>The CAFO GP requires permittees to implement best management practices (BMPs) designed to greatly decrease the likelihood that any discharge will occur. The terms and conditions of the CAFO GP are protective of water quality in all state waters, including both surface and ground waters. CAFOs may need to obtain a water right from the Montana Department of Natural Resources and Conservation to address increase demands for water quantity.</p>
<p>3. Air Quality:</p> <p>Will pollutants or particulate be produced?</p> <p>Is the project influenced by air quality regulations or zones (Class I airshed)?</p>	<p>Manure and animal mortalities may be a source of objectionable odors and air pollutants. Such odors and air pollutants may be a secondary impact of land application of manure required by the CAFO GP. The terms and conditions of the CAFO GP require proper storage and disposal of animal wastes and dead animals, thereby potentially reducing emissions of pollutants and particulate matter that could negatively affect air quality. Increases in traffic may cause more dust to be generated from gravel roads, which may be a secondary impact of manure hauling requirements under the permit.</p> <p>The CAFO GP and Montana Water Quality Act do not directly regulate effects on air quality parameters. Coverage under the CAFO GP does not relieve the permittee from obeying any applicable air quality standards or obtaining any necessary air quality permits.</p>
<p>4. Vegetation Cover, Quantity and Quality: Will vegetative communities be significantly impacted?</p> <p>Are any rare plants or cover types present?</p>	<p>Land application of animal wastes, when carried out in accordance with the terms and conditions of the CAFO GP, can have a positive effect on plant growth. Typically, there are no new ground disturbances in conjunction with authorization under the CAFO GP.</p>

Impacts on the Physical Environment	
Resource	[Y/N] Potential Impacts and Mitigation Measures
	When permit applicants propose new ground disturbance in conjunction with authorization under the CAFO GP, DEQ will conduct an individual EA. As part of the assessment process, DEQ will conduct a site-specific evaluation of the potential for negative impacts to rare plants and cover types.

Impacts on the Physical Environment	
Resource	[Y/N] Potential Impacts and Mitigation Measures
<p>5. Terrestrial, Avian and Aquatic Life and Habitats:</p> <p>Is there substantial use of the area by important wildlife, birds or fish?</p>	<p>Most CAFOs permitted under the previous CAFO GP are located on previously disturbed land in predominantly agricultural areas. This trend is expected to continue as additional CAFOs seek and obtain coverage under the CAFO GP. The CAFO GP expressly limits discharges of wastes to state waters that could result in harmful effects on wildlife and their habitat. Typically, there are no new ground disturbances in conjunction with authorization under the CAFO GP. When permit applicants propose new ground disturbance in conjunction with authorization under the CAFO GP, DEQ will conduct an individual EA. As part of the assessment process, the Department will conduct a site-specific evaluation of the potential for negative impacts to terrestrial, avian, and aquatic life and habitats.</p>
<p>6. Unique, Endangered, Fragile or Limited Environmental Resources:</p> <p>Are any federally listed threatened or endangered species or identified habitat present?</p> <p>Any wetlands?</p> <p>Species of special concern?</p>	<p>The CAFO GP requires implementation of specific practices designed to prevent discharges of wastes that could potentially harm unique, endangered, fragile, or limited environmental resources. Authorizations do not waive the responsibility for operations to comply with the federal Endangered Species Act.</p> <p>Typically, there are no new ground disturbances in conjunction with authorization under the CAFO GP. When permit applicants propose new ground disturbance in conjunction with authorization under the CAFO GP, DEQ will conduct an individual EA. As part of the assessment process, the DEQ will conduct a site-specific evaluation of the potential for negative impacts to unique, endangered, fragile or limited environmental resources.</p> <p>If, during the operation and/or construction of a CAFO, a permittee discovers the presence of a federally listed threatened or endangered species, the permittee is urged to contact the Montana Natural Heritage Program or the Montana Department of Fish, Wildlife and Parks.</p> <p>New applicants seeking coverage under this CAFO GP must contact the Montana Natural Heritage Program (MTNHP) and include their analysis on any impacts to unique ecological resources or species of special concern as part of the NOI package.</p>
<p>7. Sage Grouse Executive Order No. 12-2015</p>	<p>Typically, there are no new ground disturbances in conjunction with authorization under the CAFO GP. Projects within designated sage grouse habitat will be addressed through the Montana Sage Grouse Habitat Conservation Program. The program has a role of</p>

	<p>consultation, recommendation, and facilitation, and has no authority to approve or deny a project. Certain limits or conditions may apply to a project within designated sage grouse habitat. Any recommendations or mitigations determined by the program are provided to the project proponent in a consultation letter. The resulting consultation letter is required with the submitted Notice of Intent (NOI) form to DEQ before authorization can occur.</p>
<p>8. Historical and Archaeological Sites: Are any historical, archaeological or paleontological resources present?</p>	<p>Operators and/or owners of new or proposed CAFOs must adhere to any applicable state or federal laws and regulations. Additionally, new applicants seeking coverage under this CAFO GP must contact the Montana State Historic Preservation Office (SHPO) and include any analysis on any historical, cultural, or archeological resources as part of the NOI package. Therefore, no significant impacts are anticipated. However, should structures need to be altered or if cultural materials be inadvertently discovered during this project the SHPO should be contacted.</p>
<p>9. Aesthetics: Is the project on a prominent topographic feature? Will it be visible from populated or scenic areas? Will there be excessive noise or light?</p>	<p>Typically, there are no new ground disturbances in conjunction with authorization under the CAFO GP. When permit applicants propose new ground disturbance in conjunction with authorization under the CAFO GP, DEQ will conduct an individual EA. As part of the assessment process, DEQ will conduct a site-specific evaluation of the potential for negative impacts to aesthetics.</p> <p>Most CAFOs eligible for coverage under the CAFO GP are expected to be located in predominantly rural, agricultural areas where they would not present an appreciably different aesthetic than what already exists.</p> <p>The terms and conditions of the CAFO GP do not directly regulate impacts to aesthetics. Operation of the facility could increase traffic and lights from equipment, which may be a secondary impact of land application requirements of the CAFO GP.</p>
<p>10. Demands on Environmental Resources of Land, Water, Air or Energy: Will the project use resources that are limited in the area? Are there other activities nearby that will affect the project? Will new or upgraded powerline or other energy source be needed)</p>	<p>The terms and conditions of the CAFO GP do not, in and of themselves, cause or require significant demands on environmental resources of land, water, air or energy. The construction and operation of new CAFOs and/or new structures may increase demands on environmental resources. However, existing resources are expected to be sufficient to meet the demands, and the overall increase in demand is expected to be sufficiently limited in extent as to not cause any significant impacts.</p> <p>When permit applicants propose new ground disturbance or construction projects in conjunction with authorization under the CAFO GP, DEQ will conduct an individual EA. As part of the assessment process, DEQ will conduct a site-specific evaluation of the potential for impacts to demands on environmental resources of land, water, air, and energy.</p>
<p>11. Impacts on Other Environmental Resources: Are there other activities nearby that will affect the project?</p>	<p>The CAFO GP is a proactive tool for limiting negative impacts to water quality and the environmental resources that depend upon good water quality for survival. The CAFO GP requires permittees to implement BMPs designed to greatly decrease the likelihood that any discharge will occur. The CAFO GP allows DEQ to deny an authorization under the CAFO GP if a facility appears to be</p>

	unable to comply with state water quality standards. When permit applicants propose new ground disturbance in conjunction with authorization under the CAFO GP, DEQ will conduct an individual EA. As part of the assessment process, DEQ will conduct a site-specific evaluation of the potential for negative impacts on environmental resources.
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Impacts on the Human Environment	
Resource	[Y/N] Potential Impacts and Mitigation Measures
<p>12. Human Health and Safety: Will this project add to health and safety risks in the area?</p>	<p>Pathogens may be present in manure and process wastewater. Human health and safety is dependent upon the availability of good quality water. The CAFO GP is a proactive tool for limiting negative impacts on water quality as a result of CAFO operations. The CAFO GP allows DEQ to deny an authorization under the CAFO GP if a facility appears to be unable to comply with state water quality standards. The CAFO GP requires permittees to implement BMPs designed to greatly decrease the likelihood that any discharge will occur, such as designing to contain a 25-year, 24-hour storm.</p> <p>The terms and conditions of the CAFO GP are protective of water quality in all state waters, including both surface and ground waters. By protecting the quality of state waters, the terms and conditions of the CAFO GP serve to protect the health and safety of the people who use state waters for drinking, industry and recreation.</p>
<p>13. Industrial, Commercial and Agricultural Activities and Production: Will the project add to or alter these activities?</p>	<p>Under the CAFO GP, permittees will be required to develop and implement practices to protect the natural resources that industry, commerce and agriculture depend upon in order to maintain existing levels of production and allow for future expansion. Permittees will be required to implement sound, basic, recordkeeping and self-monitoring practices designed to protect water quality.</p>
<p>14. Quantity and Distribution of Employment: Will the project create, move or eliminate jobs? If so, estimated number.</p>	<p>The reissuance of the CAFO GP is not expected to create a new industry, move jobs, or decrease/eliminate employment opportunities. Some CAFOs may choose to offer minimum wage jobs and hire from outside the local labor market.</p>
<p>15. Local and State Tax Base and Tax Revenues: Will the project create or eliminate tax revenue?</p>	<p>The reissuance of a CAFO GP is not expected to create a new industry, move jobs, or decrease/eliminate employment opportunities.</p>
<p>16. Demand for Government Services: Will substantial traffic be added to existing roads? Will other services (fire protection, police, schools, etc.) be needed?</p>	<p>Secondary impacts may occur from trucks hauling manure to land application sites. Traffic may increase due to feed trucks, livestock trucks and manure hauling equipment. Local service providers may face challenges fulfilling the needs of new workers in the area. Existing resources are expected to be adequate. Increased demand for local government services is not anticipated.</p>

Impacts on the Human Environment	
Resource	[Y/N] Potential Impacts and Mitigation Measures
<p>17. Locally Adopted Environmental Plans and Goals: Are there State, County, City, USFS, BLM, Tribal, etc. zoning or management plans in effect?</p>	<p>DEQ is not aware of any currently authorized CAFOs impacting locally adopted environmental plans or goals. When permit applicants propose new ground disturbance in conjunction with authorization under the CAFO GP, DEQ will conduct an individual EA. As part of the assessment process, DEQ will conduct a site-specific evaluation of the potential for impacts on locally adopted environmental plans and goals.</p> <p>Additionally, this CAFO GP does not exempt permittees from any local management plans or regulations, and all covered facilities must obtain any applicable approvals or permits.</p>
<p>18. Access to and quality of Recreational and Wilderness Activities: Are wilderness or recreational areas nearby or accessed through this tract? Is there recreational potential within the tract?</p>	<p>DEQ is not aware of any currently authorized CAFOs impacting access to and quality of recreational and wilderness activities. When permit applicants propose new ground disturbance in conjunction with authorization under the CAFO GP, DEQ will conduct an individual EA. As part of the assessment process, DEQ will conduct a site-specific evaluation of the potential for impacts on access to and the quality of recreational and wilderness activities.</p> <p>Additionally, the CAFO GP does not exempt permittees from any local, state, or federal regulations regarding public access or right of way. Generally, facilities are constructed in remote locations, off of roads, and access to recreation or wilderness activities is not restricted. Also, this CAFO GP does not exempt permittees from any state or federal wilderness or recreation area rules and regulations, and all covered facilities must obtain any applicable approvals or permits to operate in these areas.</p>
<p>19. Density and Distribution of Population and Housing: Will the project add to the population and require additional housing?</p>	<p>Most CAFOs are existing, but new CAFOs may bring new workers to the area. Adoption and implementation of the CAFO GP is not expected to influence the density and distribution of population and housing. When permit applicants propose new ground disturbance in conjunction with authorization under the CAFO GP, DEQ will conduct an individual EA. As part of the assessment process, DEQ will conduct a site-specific evaluation of the potential for impacts on the density and distribution of population and housing.</p>
<p>20. Social Structures and Mores: Is some disruption of native or traditional lifestyles or communities possible?</p>	<p>Some CAFOs may choose to offer minimum wage jobs and hire from outside the local labor market. The terms and conditions of the CAFO GP require permittees to implement practices in order to protect the quality of state waters. This approach helps to ensure the sustainability of local lifestyles and communities who depend on the availability of clean water for their survival.</p>
<p>21. Cultural Uniqueness and Diversity: Will the action cause a shift in some unique quality of the area?</p>	<p>The terms and conditions of the CAFO GP require permittees to implement practices to protect the quality of state waters. This approach helps to ensure the sustainability of local cultures that depend on the availability of clean water for their survival.</p>
<p>22. Other Appropriate Social and Economic Circumstances:</p>	<p>No significant impacts are anticipated as a result of the proposed action.</p>

Impacts on the Human Environment	
Resource	[Y/N] Potential Impacts and Mitigation Measures
<p>23(a). Private Property Impacts: Are we regulating the use of private property under a regulatory statute adopted pursuant to the police power of the state? (Property management, grants of financial assistance, and the exercise of the power of eminent domain are not within this category.) If not, no further analysis is required.</p>	<p>The CAFO GP imposes an obligation on the facility to prevent adverse effects to state waters, which constitutes a regulation of private property under the police powers of the state. The permit implements the Water Quality Act, Title 75, Chapter 5, MCA.</p>
<p>23(b). Private Property Impacts: Is the agency proposing to deny the application or condition the approval in a way that restricts the use of the regulated person's private property? If not, no further analysis is required.</p>	<p>The permit conditions do not interfere with the permittee's ability to use its private property. The conditions do require the permittee to implement design and management practices to prevent adverse effects to state waters.</p>
<p>23(c). Private Property Impacts: If the answer to 21(b) is affirmative, does the agency have legal discretion to impose or not impose the proposed restriction or discretion as to how the restriction will be imposed? If not, no further analysis is required. If so, the agency must determine if there are alternatives that would reduce, minimize or eliminate the restriction on the use of private property, and analyze such alternatives. The agency must disclose the potential costs of identified restrictions.</p>	<p>Not Applicable</p>

24. Description of and Impacts of other Alternatives Considered: DEQ is required by Montana statute to reissue the CAFO GP. Other than re-issuing this general permit for another five-year cycle, DEQ considered:

A. No Action:

Under the 'No Action' alternative, DEQ would not reissue the CAFO GP, and owner/operators would be required to seek individual MPDES permit coverage. This would be expensive, time-consuming, and provide no foreseeable environmental benefits. This alternative may result in owner/operators discharging without permit coverage and may result in a net negative impact to water quality as the general permit is designed to prevent pollution and degradation of state waters.

B. Approval with Modification:

DEQ has not identified any substantial modifications that need to be made to the CAFO GP in order to reissue the CAFO GP. However, DEQ has identified areas that need clarification and clearer permit language.

25. Summary of Magnitude and Significance of Potential Impacts:

There were not any significant potential impacts identified that were not already addressed by the permit. Impacts were assessed with the assumption that facilities who are granted authorizations to discharge under the CAFO GP will comply with the terms and conditions of the CAFO GP. The CAFO GP specifically prohibits significant adverse impacts to state surface and ground waters. The

application and review process set forth in the CAFO GP and in other applicable state regulations helps to ensure that all facilities that obtain coverage under the CAFO GP are capable of meeting the terms and conditions of the CAFO GP. Therefore, potential impacts of reissuing the CAFO GP are not of sufficient magnitude to be considered significant.

DEQ is aware of the recent district court opinion in *Held v. State*, ruling the statutory prohibition on including greenhouse gas analyses in MEPA reviews unconstitutional.¹ That decision is being appealed to the Montana Supreme Court and final resolution is yet unsettled. While litigation is ongoing, and consistent with the court order, DEQ has started a process to assess and improve our environmental review processes, including consideration of future climate impact analyses.

26. Cumulative Effects:

There were not any significant potential impacts identified that were not already addressed by the permit. Impacts were assessed with the assumption that facilities who are granted authorizations to discharge under the CAFO GP would comply with the terms and conditions of the CAFO GP. The CAFO GP specifically prohibits significant adverse impacts to state surface and ground waters. The application and review process set forth in the CAFO GP and in other applicable state regulations helps to ensure that all facilities that obtain coverage under the CAFO GP are capable of meeting the terms and conditions of the CAFO GP. Therefore, potential impacts of reissuing the CAFO GP are not of sufficient magnitude to be considered significant.

27. Preferred Action Alternative and Rationale:

The preferred action is to approve the reissuance of the CAFO GP. Reissuance of the CAFO GP will enable the Department to meet its legal obligation under 75-5-402, MCA of the Montana Water Quality Act, to issue permits for discharges of wastes to state waters.

Recommendation for Further Environmental Analysis:

EIS More Detailed EA No Further Analysis

Rationale for Recommendation: There will be no significant adverse impacts on the physical, biological or social portion of the human and natural environment.

28. Public Involvement:

This EA was made available for public comment for a period of 35 days, beginning **July 17, 2023**, and ending at the close of business on **August 21, 2023**. Comments were submitted in accordance with Public Notice MT-23-04. No comments were received in written and/or oral format during the public hearings held August 21, 2023. DEQ provides public notice of each hearing for a period of 30 days prior to the date of the hearing. DEQ has responded to substantive comments received during the public comment period and in conjunction with the public hearings.

29. Persons and agencies consulted in the preparation of this analysis:

- Montana Department of Environmental Quality, Water Protection Bureau Staff
- Montana State Legislature, Legislative Services Division
- Montana Secretary of State, Administrative Rules, and Management Services Division

EA Checklist Prepared By: Hannah New October 2023

Approved By:

Tatiana Davila, Bureau Chief
Water Protection Bureau

11/14/2023

Date

¹ *Held v. State*, No. CDV-2020-307 (Mont. 1st Jud. Dist. Ct. Aug. 14, 2023).