

**FACT SHEET  
for the****2011 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) AND  
STATE DISPOSAL SYSTEM (SDS)  
GENERAL LIVESTOCK PRODUCTION PERMIT****Permit MN #G440000****I. INTRODUCTION**

The Minnesota Pollution Control Agency (MPCA) proposes to issue a General National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) Permit for Large Concentrated Animal Feeding Operations (CAFOs), as defined under federal regulations, and feedlots capable of holding 1000 animal units (AU) or more, as defined under Minnesota Law. This fact sheet has been developed to document the basis for the limitations and conditions of Permit MN #G440000 (2011 General NPDES/SDS Livestock Production Permit) in accordance with Title 40 of the Code of Federal Regulations (CFR), Sections 124.8 and 124.56, and Minn. R. 7001.0100, subp. 3.

**II. AVAILABILITY OF DRAFT PERMIT**

A paper copy of the draft 2011 General NPDES/SDS Permit may be obtained by:

- Download from the MPCA Feedlot site at: <http://www.pca.state.mn.us/hot/feedlots.html>
- Calling the MPCA at: 651-757-2096 or toll free at 1-800-657-3864, (for users of Telecommunications Devices for the Hearing Impaired, call 651-282-5332); or
- Submitting a written request or electronic message to the contact address provided in Part XIII, of this fact sheet.

The draft 2011 General NPDES/SDS Permit is also available for review at the following MPCA offices during regular business hours 8:00 a.m. to 4:30 p.m., Monday through Friday.

St. Paul Office, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194

Brainerd Office, 7678 College Road, Suite 105, Baxter, Minnesota 56425

Detroit Lakes Office, 714 Lake Ave., Suite 220, Detroit Lakes, Minnesota 56501

Mankato Office, 12 Civic Center Plaza, Suite 2165, Mankato, MN 56001

Marshall Office, 1420 E. College Drive, Suite 900, Marshall, Minnesota 56258

Rochester Office, 18 Wood Lake Drive S.E., Rochester, Minnesota 55904

Willmar Office, 1601 Highway 12 East, Suite 1, Willmar, MN 56201-6002

### **III. BACKGROUND**

#### **Federal CAFO Regulations**

The federal Water Pollution Control Act (also referred to as the Clean Water Act [CWA]), which was enacted in 1972, provides that the discharge of pollutants to waters of the United States from any point source is unlawful unless the discharge is in compliance with an NPDES permit. Pursuant to Section 502(14) of the CWA and 40 CFR 122.2, CAFOs are defined as point sources; therefore, requiring the regulation of these operations under the NPDES permit system and compliance with effluent guidelines established in 40 CFR Part 412. A discharge can be considered any addition of any pollutant or combination of pollutants to waters of the United States. This includes runoff or overflows from areas used to house livestock and for the storage or processing of manure, litter, process wastewater or manure-contaminated runoff. A discharge may also occur as the result of runoff from fields on which manure, litter, process wastewater or manure-contaminated runoff is not applied in accordance with applicable state and federal rules and regulations.

The administration of the NPDES permitting program has been delegated to the MPCA. This delegation provides the MPCA the authority to issue NPDES permits. The proposed general NPDES/SDS Permit has been developed to incorporate both the federal and state rules and regulations that apply to livestock and poultry operations located in Minnesota. Where the federal and state rules and regulations are not equivalent the more restrictive rule or regulation applies. This is the case in the requirement for all CAFOs in Minnesota to apply for an NPDES permit which is required under state statute and rule. This is discussed further in the “State Feedlot Rules and Statutes” portion of this fact sheet.

Revised federal regulations pertaining to CAFOs in 40 CFR Parts 122, 123, and 412, became effective on April 14, 2003. The revised regulations modified the definition of a CAFO in 40 CFR §122.23, eliminated previous exemptions from obtaining an NPDES permit, and modified effluent guidelines for certain animal species. In the revised regulations the term animal unit was eliminated and three CAFO categories (Large, Medium, and Small) were established. Small and Medium CAFOs are not eligible for coverage under the proposed General Permits, so are not mentioned in any further detail in this fact sheet. A Large CAFO is required under the revised federal regulations to apply for an NPDES permit and is any animal feeding operation that confines as many as or more than the number of animals provided in Table 1, under the “EPA CAFO Threshold” column.

Table 1. EPA Large CAFO Thresholds and MPCA Animal Unit Equivalents

Animal Type & Size	EPA CAFO Threshold (# animals)
Mature dairy cows > 1000 lb.	700
Mature dairy cows < 1000 lb.	700
Dairy Replacement Heifer	1,000
Dairy calf	1,000
Veal calves	1,000
Slaughter steer or Stock cow	1,000
Feeder cattle (stocker or backgrounding) or Heifer	1,000
Cow/calf pair	1,000
Beef calf	1,000
Swine, >300 lb.	2,500
Swine, 55 – 300 lb.	2,500
Swine, <55 lb.	10,000
Horses	500
Sheep or Lambs	10,000
Turkeys, >5 lb.	55,000
Turkeys, <5 lb.	55,000
Layer hens/broilers, liquid system	30,000
Non-layer chickens, non-liquid system, >5 lb.	125,000
Non-layer chickens, non-liquid system, <5 lb.	125,000
Layer hens, non-liquid system, >5 lb.	82,000
Layer hens, non-liquid system, <5 lb.	82,000
Ducks, non-liquid system	30,000
Ducks, liquid system	5,000

In February 2005, the Second Circuit Court of Appeals issued its decision in *Waterkeeper Alliance et al. v. EPA* regarding legal challenges to the 2003 rule. Among other things, the court directed EPA to:

- Remove the requirement for all CAFOs to apply for NPDES permits, and
- Add requirements for Nutrient Management Plans (NMPs) to be submitted by CAFOs with their permit applications, reviewed by permitting authorities and the public, and the NMP terms incorporated into permits.

In response to the court's decision, EPA revised the National Pollutant Discharge Elimination System (NPDES) permitting requirements (40 CFR Part 122) and Effluent Limitations Guidelines and Standards (ELGs) (40 CFR Part 412) for CAFOs. The final rule was published in the Federal Register on November 20, 2008 (73 FR 70418).

The final rule includes two key changes that address the *Waterkeeper* court decision. First, it revises the requirement for all CAFOs to apply for NPDES permits and instead requires only those CAFOs that discharge or propose to discharge to apply for permits. In the discussion

accompanying the revised rule, EPA is providing additional clarification on how operators should evaluate whether they discharge or propose to discharge. As explained in the final rule, this evaluation calls for a case-by-case determination by the CAFO owner or operator as to whether the CAFO does or will discharge from its production area or land application area based on an objective assessment of the CAFO's design, construction, operation, and maintenance. The final rule also provides a voluntary no discharge certification option for CAFOs that do not discharge or propose to discharge. A properly certified CAFO demonstrates to the permitting authority that it is not required to seek permit coverage. Note that this change to the federal regulations does not impact the requirement under Minn. Statute 116.07, Subd. 7c. for livestock and poultry operations that house 1,000 animal units or more, or meet the definition of a CAFO to apply for an NPDES Permit (see **State Feedlot Rules and Statutes**, below).

Second, the rule adds new requirements relating to NMPs for permitted CAFOs. CAFO operators were already required to develop and implement NMPs under the 2003 rule; the new rule requires CAFOs to submit the NMPs along with their NPDES permit applications. Under the new rule, permitting authorities are then required to review the NMPs and provide the public with an opportunity for meaningful review and comment on the plans. Permitting authorities are also required to include the terms of the NMP as enforceable elements of the permit. The final rule lays out a process for including these facility-specific provisions in both individual and general permits.

The final rule also addresses other aspects relating to the *Waterkeeper* court decision. First, EPA is clarifying that water quality-based effluent limitations (WQBELs) may be required in any CAFO permit with respect to production area discharges and discharges from land application areas that are not exempt agricultural stormwater. Second, EPA removed the provision that allowed new source swine, poultry, and veal calf CAFOs to use containment structures designed for the 100-year, 24-hour storm to fulfill the no discharge requirement. Such CAFOs may now meet the no discharge requirement with site-specific best management practice effluent limitations. Finally, the final rule affirms that the Best Conventional Technology (BCT) limitations established in 2003 do in fact represent the Best Conventional Control Technology for achieving fecal coliform reductions.

There are two types of NPDES permits, individual and general. An Individual NPDES Permit is unique to each facility. The requirements in an individual permit are based on the facility's operation, the need for any corrective measures, and other factors. A general permit is one permit that covers facilities that have similar operations. A General NPDES Permit is a potential alternative to an Individual NPDES Permit and affords coverage to new and existing facilities that meet the eligibility criteria given in the General NPDES Permit.

### **State Feedlot Rules and Statutes**

The 2011 General NPDES/SDS Livestock Production Permit is a combination of the federal requirements for large CAFOs and the Minnesota rules and statutes, and as such is both an NPDES permit and an SDS permit.

Minn. Statute 116.07, Supd. 7c. and Minn. R. 7020.0405, Subp. 1. A. requires that the owner of a feedlot facility that meets the criteria for a CAFO apply to the MPCA for an NPDES/SDS permit for the construction, operation, and maintenance of the facility. Under Minn. R. 7020.0300, Subp. 5a, CAFO means animal feedlots meeting the definition of a CAFO in 40 CFR § 122.23. Thus, owners of all animal feedlots that meet the definition of CAFO in 40 CFR § 122.23 must apply to the MPCA for an NPDES/SDS permit for the construction, operation, and maintenance of the facility. Minn. Statute 116.07, Subd. 7c. requires that the MPCA issue NPDES permits to

feedlot facilities that house 1,000 AU or more, or are CAFOs. Based on Minnesota rule and statute, the MPCA has the authority to issue an NPDES permit to CAFOs as well as any feedlot facility with a capacity of 1,000 AU or more.

#### **IV. 2011 GENERAL NPDES/SDS LIVESTOCK PRODUCTION PERMIT**

The draft 2011 General NPDES/SDS Livestock Production Permit provides coverage for existing and new feedlot facilities in Minnesota that meet the:

1. Eligibility criteria listed in Part V. of this factsheet; and
2. The definition of a Large CAFO (as defined in 40 CFR § 122.23(b) (4)) or is capable of holding 1,000 or more AU (as defined under Minn. R. 7020.0300, subp. 5 and Minn. Statute 116.06, subd. 4a).

The 2011 General NPDES/SDS Livestock Production Permit will be issued on February 1, 2011 and expires on January 31, 2016. Upon issuance the 2011 General NPDES/SDS Livestock Production Permit (MN #G440000) will replace the 2006 General NPDES/SDS Livestock Production Permit for feedlot facilities.

#### **V. CRITERIA FOR COVERAGE UNDER THE PROPOSED GENERAL NPDES/SDS LIVESTOCK PRODUCTION PERMIT**

The criteria for coverage explains which feedlot facilities are eligible for coverage under the General NPDES/SDS Livestock Production Permit. Any site that is a large CAFO or is capable of holding 1,000 or more AU is eligible to apply for coverage under the 2011 General NPDES/SDS Livestock Production Permit. Coverage under the Permit may not be granted to those facilities that fall into one, or more, of the following categories:

1. The owner/operator requests an individual NPDES/SDS permit;
2. The owner/operator agrees or is required to have conditions placed in their permit, which are not covered by the 2011 General NPDES/SDS Permit;
3. The owner/operator has had past formal enforcement actions levied against them and, as a result of the past violations; the MPCA determines that additional conditions are necessary;
4. The owner/operator has a pollution hazard as defined in Minn. R. 7020.0300, subp. 19a;
5. The owner/operator is required to obtain an individual NPDES/SDS permit in accordance with Minn. R. 7001.0210, subp. 6, or 40 CFR § 122.28 (b) (3);
6. The owner/operator has proposed a technology for handling, processing and/or storing manure that requires additional permit conditions other than those that are provided for within the 2011 General NPDES/SDS Permit;
7. Where a material other than manure is handled, stored or treated. This material includes industrial-by-products, septage, solid wastes, or other materials that the MPCA determines needs additional permit conditions other than those provided for within the

2011 General NPDES/SDS Permit. This criterion does not apply to facilities that use industrial-by-products as feedstuffs; or

8. Where liquid manure will be applied to frozen or snow-covered soils at times and situations that are not allowed under Part II.B. of the 2011 General NPDES/SDS Permit.

The excluded feedlot facilities are required to obtain an Individual NPDES/SDS Permit.

## **VI. TYPE OF DISCHARGES CONTROLLED BY THE PROPOSED GENERAL NPDES/SDS LIVESTOCK PRODUCTION PERMIT**

There are several pollutants associated with discharges and emissions from feedlot facilities, including: nutrients (particularly nitrogen and phosphorus), organic matter, solids, pathogens, and odorous/volatile compounds. Additional pollutants also include salts and trace elements and, to a lesser degree, antibiotics, pesticides, and hormones. These pollutants can enter the environment through a number of pathways, including: surface runoff and erosion, overflows from lagoons, spills, leaching into soil and ground water, and volatilization of compounds and subsequent redeposition to the landscape. These discharges of pollutants can originate from animal confinement areas, manure handling and containment systems, and cropland where manure is applied.

Nutrients (nitrogen and phosphorus) are a major source of water quality impairment in Minnesota. CAFOs are one source of these nutrients that are contributing to this impairment. Nitrogen occurs in several forms in manure including ammonia and nitrate. Ammonia is of environmental concern because it is toxic to aquatic wildlife. Nitrate is a concern because excessive levels in drinking water can produce adverse health impacts to humans and other warm blooded animals. Phosphorus is of concern in surface waters because it is a nutrient that can lead to eutrophication and the resulting adverse impacts of fish kills, reduced biodiversity, objectionable tastes and odors, increased drinking water treatment costs, and growth of toxic organisms.

Organic matter in manure can exert an oxygen demand on the surface water when it decomposes; thus, depleting the oxygen needed to support aquatic life. Solids in the manure can increase the turbidity of the surface water, physically hindering the functioning of aquatic plants and animals. Manure may contain a variety of microorganism species in which some are human pathogens. More than 150 pathogens found in manure are associated with risks to humans, including the six human pathogens that account for more than 90 percent of food and waterborne diseases in humans.

The draft General NPDES/SDS Livestock Production Permit for feedlot facilities was developed to prohibit the discharge of pollutants from the production area and minimize the amount of pollutants entering waters of the State as a result of land application of manure. The intent of the draft permit is to protect surface water quality around feedlot facilities and to minimize any potential impacts from the above-mentioned pollutants through permit requirements.

## **VII. PERMIT COVERAGE AND PUBLIC COMMENT PROCESS**

### **A. Application for Coverage**

Feedlot owners interested in obtaining coverage under the 2011 General NPDES/SDS Livestock Production Permit must submit a completed feedlot permit application, available from the MPCA at any of the MPCA's regional offices (addresses are included in the public

notice), or at the MPCA's website. The applicable submittals (including application fees) outlined in the permit application and Part I.E. of the permit must be included with the permit application.

**B. Public Comment on Applications for Coverage**

Applications for coverage under the 2011 General NPDES/SDS permits and related information are open for public review, subject to any applicable provisions of the Minnesota Government Data Practices Act. The MPCA maintains a list of site-specific information for facilities that have applied and updates the list approximately once every two weeks. A facility will remain on the list for approximately 30 days after NPDES/SDS permit coverage is provided. This list can be found at: <http://www.pca.state.mn.us/hot/feedlot-generalpermit.html> The public may submit comments about NPDES/SDS permit applications to the appropriate MPCA office at any time before or after permit coverage is provided. Comments will be considered and may result in additional inspections, or modifications to applicable plans. In certain cases, applicants may be requested to apply for an individual NPDES/SDS permit.

**VIII. BASIS FOR DRAFT GENERAL PERMIT REQUIREMENTS**

The 2011 General NPDES/SDS Livestock Production Permit is based on requirements of the Federal Clean Water Act, as amended; 40 CFR Parts 122, 123, and 124, as amended; Minn. Stat. chs. 115 and 116; and Minn. R. chs. 7001, 7009, 7020, 7053 and 7060. The proposed General NPDES/SDS Permit contains the same or similar protections for surface waters, ground water and air quality as the current 2006 General NPDES/SDS Livestock Production Permit (MN #G440000), which expires on May 30, 2011, as well as provisions that are based on the 2008 revisions to the federal regulations. Conditions have also been included to provide specificity to the permit in regards to anaerobic digestion of manure, ground water monitoring, and leachate and/or runoff from feed storage areas. These changes are discussed further in Part IX. of this factsheet.

In accordance with the proposed permit conditions, feedlot facility owners must meet construction, operational, and maintenance requirements for both the production facility and land application activities. The following items outline key requirements of the proposed general permit.

**A. Content of Permit Application**

Part I.E. of the draft General NPDES/SDS Livestock Production Permit outlines the information that must be included in a permit application for a General NPDES/SDS Livestock Production Permit. The application will contain several site specific plans that address differences in facility design, management and operating procedures. The completed application and plans will be reviewed by MPCA staff for compliance with applicable rules and regulations prior to providing coverage under a General NPDES/SDS Livestock Production Permit. The MPCA-approved plans are an enforceable part of the permit and, upon receipt of notification of coverage under the general permit, the Permittee is required to comply with the plans and all permit conditions that apply to the plans. Table 2 itemizes the plans required to be developed and implemented by the feedlot facility owners.

**Table 2. Plans Required to be Submitted with a General Permit Application**

Type of Plan	Relevant Portion of Draft Permit	Draft Permit Pg. #	Authority
Air Emission	Part I.E.2.a.	5	Minn. R. 7020.0505, subp. 4.B.(1)
Emergency Response	Part I.E.2.b.	5	Minn. R. 7020.0505, subp.4.B.(2)
Manure and Nutrient Management	Part I.E.2.c. and Part II.	5	Minn. R. 7020.2225, subp. 4 and 40 CFR Parts 122.42 and 412.4
Design Plans and Specifications	Part I.E.2.d. and Part III.B. through E.	5	Minn. R. 7020.2100
Operation and Maintenance	Part I.E.2.e. and Part III.B.	5	Minn. R. 7020
Animal Mortality	Part I.E.2.f. and Part III.I.	5	40 CFR Parts 122.42
Stormwater Pollution Prevention	Part I.E.3., Part III.F. and Appendix C	6	40 CFR Parts 122.26

A ground water monitoring plan is required at those facilities where the agency requires monitoring in accordance with Minn. Stat. 115.03, Minn. R. ch. 7060 and Part III.G. of the permit.

#### B. Land Application

Part II of the draft General NPDES/SDS Livestock Production Permit contains conditions related to land application of manure, litter, process wastewater and manure-contaminated runoff, and nutrient management, in accordance with Minn. R. 7020.2225 and 40 CFR § 122.42; 122.23, 412.37 and 412.4. A significant portion of this part pertains to the development, implementation and maintenance of a site specific Manure and Nutrient Management Plan (MMP). The MMP is to address the location, rates, timing, testing, and conservation practices used to assure maximum utilization of the nutrients by agricultural crops and minimize movement of pollutants to surface or ground waters during land application activities.

This part of the proposed General NPDES/SDS Livestock Production Permit also provides the separate conditions that apply when the manure is: 1) land applied on land that is owned, rented, leased or otherwise under the control of the Permittee; or 2) transferred to another party. Recordkeeping is required under either practice. Table 2 provides a list of the conditions found in Part II of the draft General NPDES/SDS Livestock Production Permit.

**Table 3. Land Application and Nutrient Management Conditions**

Permit Condition	Relevant Part of Draft Permit	Draft Permit Pg. #	Authority
<b>Manure Management Plan</b>			
Develop, maintain and implement MMP	Part II.A.1	6	Minn. R. 7020.2225, subp. 4 40 CFR Parts 122.42 and 412.4 (c)(1)



Updates to MMP	Part II.A.2 and 3.	6	Minn. R. 7020.2225, subp. 4.C. Minn. R. 7020.2225, subp. 1.A.(2)
<b>Application on Land Controlled by Permittee</b>			
Provide information for fields to show acres of available cropland	Part II.B.1	8	Minn. R. 7020.2225, subp. 4.D.(3) 40 CFR Part 122.42 (e)(1)(vi)
Testing of manure	Part II.B.2.a.	8	Minn. R. 7020.2225, subp. 2 and subp. 4.D.(4) 40 CFR Part 412.4 (c)(3)
Soil testing for Nitrogen and Phosphorus at land application sites	Part II.B.2.b. and c.	8	Minn. R. 7020.2225, subp. 3.C. and subp. 4.D.(12) 40 CFR Parts 412.4 (c)(3) and (4)
Nitrogen and Phosphorus Management and Application Rates	Part II.B.3	9	Minn. R. 7020.2225, subp. 3 and subp. 4.D.(5), (6),(7) and (11) 40 CFR Parts 412.4 (c)(2), 412.37 (c)(6) and (7), and 122.42 (e)(1)(viii)
Timing of Application – summer, winter, fall, prior to rainfall, and on saturated soils	Part II.B.4.a. through e.	11	Minn. R. 7020.2225, subp.4.D.(8), (10), and (13) and subp. 6.A 40 CFR Parts 412.4 (c)(1) and (2)
Setbacks Near Sensitive Areas – surface waters, wells, mines, quarries, sinkholes	Part II.B.5.a. through e.	13	Minn. R. 7020.2225, subp. 6., 7., and 8. and subp. 1.B. 40 CFR Part 412.4 (c)(5)
Recordkeeping	Part II.B.6.	15	Minn. R. 7020.2225, subp. 5 40 CFR Parts 412.37 (c)(3) and 122.42 (e)(2)
Discharges from Land Application Activities	Part II.B.7.		Minn. R. 7020.2225, subp. 1.A. 40 CFR Parts 122.23 (e)
<b>Transferred Manure Ownership</b>			
MMP requirements	Part II.C.1. and 2.	16	Minn. R. 7020.2225, subp. 1.D. and subp. 4.E.
Recordkeeping Requirements	Part II.C.3.	17	Minn. R. 7020.2225, subp. 5.A. and D. 40 CFR Parts 122.42 (e)(3)

### C. Facility Construction, Operation and Maintenance

This portion of the draft General NPDES/SDS Livestock Production Permit includes the state and federal requirements for construction of manure storage or treatment areas, and the operation and maintenance of the production area. MPCA technical standards for the design of a manure storage or treatment area are not specifically included in the draft General Permit because this information is to be included with the permit application, and as such will be prepared and approved prior to coverage under the general permit. Installation of depth markers on all open air liquid manure storage areas, a stormwater plan for construction activities, and the disposal of animal mortalities are covered under this section. Self-inspection, recordkeeping, annual reporting and closure requirements for the production area are also covered in this section. Table 3 includes a summary of the key conditions found in this section of the General Permit.

**Table 4. Facility Construction, Operation and Maintenance Conditions**

<b>Permit Condition</b>	<b>Relevant Part of Draft Permit</b>	<b>Draft Permit Pg. #</b>	<b>Authority</b>
<b>General Facility Requirements</b>			
Location prohibitions, setbacks and separation distances	Part III.A.2.	17	Minn. R. ch. 7020, parts 2005, 2100, 2120, and 2125
Inspections	Part III.A.10.	18	40 CFR Part 412.37 (a) (1)
Recordkeeping and Reporting	Part III.A. 12 and 13	19	40 CFR Parts 412.37 (b) and 112.42 (e)(4)(vi)
<b>All Manure Storage Areas</b>			
Operation and Maintenance Plan implementation	Part III.B.2	19	Minn. R. ch. 7020, parts 2100, 2120, and 2125
Recordkeeping	Part III.B.5	20	40 CFR Parts 412.37 (b)
<b>Liquid Manure Storage Areas</b>			
Construction notifications, inspections, certifications and reports	Part III.C.	20	Minn. R. 7020.2100, subp. 5 and 6
Installation of depth markers	Part III.C.7.	21	40 CFR Parts 412.37 (a)(2)
Anaerobic Digester Construction, Operation and Maintenance	Part III.D.	21	Minn. R. 7020.2100
<b>Solid Manure Storage Areas</b>			
All Stockpiles	Part III.E.1.a.	22	Minn. R. 7020.2125, subp. 1 and 2
Short-term Stockpiles – requirements and recordkeeping	Part III.E.1.b.	22	Minn. R. 7020.2125, subp. 1 through 3
Permanent Stockpiles – notifications, and operation and maintenance	Part III.E.1.c.	23	Minn. R. 7020.2125, subp. 4
Manure Composting – requirements, recordkeeping and reporting	Part III.E.2.	24	Minn. R. 7020.2125 and Minn. R. 7020.2150
Poultry Barn Floors	Part III.E.3.	25	Minn. R. 7020.2120
<b>Other Site Specific Portions of Production Area</b>			
Stormwater Pollution Prevention Plan	Part III.F.	25	40 CFR Parts 122.26
Ground Water Monitoring Implementation and Reporting (if required)	Part III.G.	26	Minn. R. 7060.0800
Feed Storage and Feed Pad Areas	Part III.H.	27	40 CFR Parts 412.2 (d) and 412.31 (a)
Animal Mortalities	Part III.I.	28	40 CFR Parts 412.37 (a)(4)
Ambient Air Quality Standard Exemption for Removal of Manure	Part III.J.	29	Minn. R. 7020.2002 Minn. Stat. 116.0713

Closure of All or Part of Production Area	Part IV.	29	Minn. R. 7020.2025
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#### D. Recordkeeping and Reporting Requirements

Parts V.A. and V.B. of the draft General Permit list recordkeeping and reporting requirements. The MPCA is updating forms and other guidance documents to assist Permittees in the development of the required records and reports. Records that are required to be maintained by the Permittee are to be retained for at least six (6) years and made available to the MPCA upon request. The reporting requirements include:

1. The submittal of construction reports after the completion of any liquid manure storage area as required by Minn. R. 7020.2100, Subp. 5.D.;
2. Any discharge or bypass from the production area or land application areas; and
3. The annual report that is to be submitted by March 1<sup>st</sup> of each year to the MPCA by the Permittee. The annual report is to include, at a minimum, the following information:
  - a. The number and type of animals confined at the facility;
  - b. Amount of manure generated at the feedlot facility in tons and/or gallons during the previous cropping year;
  - c. Amount of manure in tons and/or gallons transferred to another party from the feedlot facility on a monthly basis in the cropping year that ended during the previous calendar year;
  - d. Total number of acres for land application covered by the MMP for the cropping year that began in the previous calendar year;
  - e. Total number of acres under the control of the Permittee that were used for land application in the cropping year that ended in the previous year;
  - f. A statement indicating if the MMP was developed by a certified manure management planner;
  - g. Land application records for the previous cropping year;
  - h. Any damage and resulting repair to any LMSA;
  - i. The results of any manure composting activities;
  - j. The results of any ground water well or perimeter tile monitoring that occurred during the previous calendar year, including the analytic results, any ground water elevation data, monitoring system construction or repairs, and an interpretation of the results;
  - k. Information pertaining to the temporary or permanent closure of any portion of the feedlot facility;
  - l. A summary of all manure discharges from the feedlot facility that have occurred in the previous calendar year; and

- m. A summary of any instances of noncompliance with the permit in the previous calendar year.

#### **E. Effluent Limitations**

The discharge limitations and other conditions of the permit are based on the effluent guidelines and other requirements specified in 40 CFR Parts 122 and 412, and Minn. R. ch. 7020. Discharges covered by the draft General NPDES/SDS Livestock Production Permit include discharges containing manure, litter, process wastewater and/or manure-contaminated runoff from the production area, manure storage or treatment facilities, and land application sites.

The draft General Permit prohibits discharge of pollutants to waters of the state from Large CAFOs except in the event of a 25-year, 24-hour storm or chronic rainfall event as defined in the permit. Under these circumstances, a large CAFO may discharge from a production area that is properly designed, operated, and maintained to contain manure, direct precipitation, and the runoff from a 25-year, 24-hour storm provided that the records required in Part V.A.3 of the draft General NPDES/SDS Livestock Production Permit, and 40 CFR § 412.37 (a) and (b) are also maintained. This discharge shall not exceed the Minnesota water quality discharge standards found in Minn. R. 7053.0305.

Discharges from the land application sites are also restricted by the draft General NPDES/SDS Livestock Production Permit. The draft General Permit detail specific land application practices that must be followed, including documentation of land application rates based on agronomic needs and other limiting factors such as soil phosphorus levels and application restrictions based on the time of year, weather conditions and proximity to sensitive areas. These requirements are designed to minimize potential releases of pollutants to waters of the state.

### **IX. SUMMARY OF SIGNIFICANT CHANGES**

The 2011 General NPDES/SDS Livestock Production Permit is similar to the 2006 General NPDES/SDS Livestock Production Permit that is currently in effect. However, a number of changes have been made to address the 2008 CAFO rule revision, provide specificity, and address issues which have arisen since the issuance of the existing general permit. The key changes are discussed below.

#### **A. Changes Resulting from 2008 CAFO Rule Revision**

As stated in Part II, above, the revised CAFO rules were published in the Federal Register on November 20, 2008. The following changes have been made to address the CAFO rule revision.

1. Manure management plans need to be written to cover the five-year permitting period. Changes made in the plans that are not reflected in the permit application need to be submitted to the MPCA, and if the changes are substantial those changes need to be public noticed.
2. Annual reporting requirements must now include the specific Manure application records. The 2006 General permit only required general information about land application activities, such as the amount of manure applied.

## B. Changes to Improve Specificity in the General Permit

### 1. Winter Application of Manure

The purpose for the change in winter application requirements of the proposed feedlot general permit revision is to incorporate EPA-required technical standards into permit language. The proposed permit increases restrictions for liquid manure application to frozen and snow-covered soils. The proposed permit also limits solid manure applications to only those sites and practices that can achieve a low rating with the phosphorus index, in addition to several other restrictions for spreading solid manure during winter conditions.

### 2. Anaerobic Digester

The MPCA is currently providing coverage for feedlot facilities that are using anaerobic digesters under the existing general permit. The digester plans and specifications are included under the requirements for submittal of plans and specifications for construction of a manure storage area, and the operational requirements are included in the Operation and Maintenance Plan. The existing permit conditions make these plans an enforceable part of the permit. The draft permit includes specific conditions (Part III.D.) for the construction, operation and maintenance of anaerobic digesters so that livestock and poultry producers and the general public are aware of the requirements pertaining to this activity.

### 3. Ground Water and Perimeter Tile Monitoring

Similar to the inclusion of anaerobic digester requirements, the MPCA is also currently providing coverage for feedlot facilities that are required to perform ground water well or perimeter tile monitoring under the existing general permit. When the agency requires ground water or tile line sampling and analysis, the monitoring plan is incorporated into the Operation and Maintenance Plan required to be submitted with the permit application.

### 4. Feed Storage Areas

Part III.H., Feed Storage and Feed Pad Areas, was added to the draft permit to specifically address the requirements of 40 CFR § 412.31. This section of the federal regulations prohibits the discharge of manure, litter, or process wastewater pollutants into waters of the U.S. from the production area, except in certain conditions which are outlined in the regulations and Part VI.A. of the draft permit. The definitions for “process wastewater” and “production area” provided in the federal regulations (40 CFR § 122.23 (b)) specifically include feed storage areas and any leachate or runoff from feed storage areas caused by precipitation. While containment of runoff from feed storage pads was generally required under the process wastewater requirements of the 2006 General Permit, the 2011 proposed permit more specifically describes options that are allowed under the general permit.

## X. **APPLICABILITY OF CHAPTER 116D**

The 2011 General NPDES/SDS Livestock Production Permit will be issued if the MPCA determines that the proposed permittee or permittees will, with respect to the facility or activity

to be permitted, comply with all applicable state and federal pollution control statutes and rules administered by the MPCA and the conditions of the permit, and that all applicable requirements of Minn. Stat. ch. 116D and the rules promulgated there under have been fulfilled.

## **XI. PRELIMINARY DETERMINATION**

The MPCA Commissioner's determination that the 2011 General NPDES/SDS Livestock Production Permit should be issued is preliminary.

## **XII. PROCEDURES FOR REACHING A FINAL DECISION ON DRAFT GENERAL PERMIT**

### **A. Public Comment Timeline**

**Public Comment Period Begins: July 13, 2009**

**Public Comment Period Ends: August 12, 2009**

### **B. How the Public Can Participate**

During the public comment period there are four formal procedures for public participation in the MPCA's consideration of permit issuance. Interested persons may:

1. Submit written comments on the draft permit;
2. Submit a written petition requesting that the MPCA hold a public informational meeting;
3. Submit a written petition requesting that the MPCA hold a contested case hearing; and/or
4. Submit a written petition to the Commissioner requesting that the MPCA Citizen's Board consider the permit matter.

Written comments and petitions may be submitted to the MPCA via U.S. mail, hand delivery or electronic mail.

### **C. Persons who submit comments or requests to the MPCA must state the following:**

1. Their interest in the draft permit;
2. The action they wish the MPCA to take, including specific references to sections of the draft permit that they believe should be changed; and
3. The reasons supporting their position stated with sufficient specificity as to allow the Commissioner to investigate the merits of their position.

### **D. Public Informational Meeting**

A public informational meeting is an informal meeting that the MPCA may hold to solicit public comment and statements on matters before the MPCA, and to help clarify and resolve issues. Six public information meetings were held around the state in July and August, 2008.

A petition requesting an additional public informational meeting must include the following information:

1. A statement identifying the matter of concern;
2. The information required under items C.1. through 3., above;
3. A statement of the reasons the MPCA should hold a public informational meeting; and
4. The issues that you would like the MPCA to address at the public informational meeting.

E. Contested Case Hearing

A contested case hearing is a formal evidentiary hearing before an administrative law judge. In accordance with Minn. R. 7000.1900, the MPCA will grant a petition to hold a contested case hearing if it finds that: (1) there is a material issue of fact in dispute concerning the draft permit; (2) the MPCA has the jurisdiction to make a determination on the disputed material issue of fact; and (3) there is a reasonable basis underlying the disputed material issue of fact or facts such that the holding of the contested case hearing would allow the introduction of information that would aid the MPCA in resolving the disputed facts in making a final decision on the draft permit. A material issue of fact means a fact question, as distinguished from a policy question, whose resolution could have a direct bearing on a final MPCA decision.

A petition for a contested case hearing must include the following information:

1. A statement of reasons or proposed findings supporting the MPCA decision to hold a contested case hearing according to the criteria in Minn. R. 7000.1900, as discussed above; and
2. A statement of the issues proposed to be addressed by a contested case hearing and the specific relief requested or resolution of the matter.

In addition and to the extent known, a petition for a contested case hearing should also include the following information:

1. A proposed list of prospective witnesses to be called, including experts, with a brief description of proposed testimony or summary of evidence to be presented at a contested case hearing;
2. A proposed list of publications, references, or studies to be introduced and relied upon at a contested case hearing; and
3. An estimate of time required for you to present the matter at a contested case hearing.

F. MPCA Decision

A written petition may be submitted to the Commissioner requesting that the MPCA Citizens' Board consider the Permit issuance. To be considered timely, the petition must be received by the MPCA by 4:30 p.m. on the date the public comment period ends, identified in Part XII.A., above. Under the provisions of Minn. Stat. § 116.02, subd 6(4), the decision

whether to issue the Permit and, if so, under what terms will be presented to the Board for decision if: (1) the Commissioner grants the petition requesting the matter be presented to the Board; (2) one or more Board members request to hear the matter before the time the Commissioner makes a final decision on the Permit; or (3) a timely request for a contested case hearing is pending. You may participate in the activities of the MPCA Board as provided in Minn. R. 7000.0650.

### **XIII. CONTACT PERSON**

Comments on the draft 2011 General NPDES/SDS Livestock Production Permit must be received in writing during the public comment period identified in Part XII.A., above. Comments and/or requests should be mailed to:

Kim M. Brynildson, P.E.  
Minnesota Pollution Control Agency  
Regional Division, East Feedlot Unit  
520 Lafayette Road North  
St. Paul, MN 55155-4194

[\*kim.brynildson@pca.state.mn.us\*](mailto:kim.brynildson@pca.state.mn.us)

Phone 651-757-2250  
Toll free 1-800-657-3864  
Fax 651-282-6247

All written comments and requests received during the public comment period are considered in the final decision regarding the permit. The MPCA may revise the draft 2011 General NPDES/SDS Livestock Production Permit to reflect any comments received during the comment period. If the MPCA does not receive any written comments or requests during the public comment period, the MPCA Commissioner is authorized by the MPCA Board to make the final decision concerning the draft 2011 General NPDES/SDS Livestock Production Permit.