Response to Comments

Idaho Concentrated Animal Feeding Operation General Permit (IDG010000)

Introduction

On October 23, 2019, the U.S. Environmental Protection Agency Region 10 (EPA) issued a public notice for the proposed reissuance of the National Pollutant Discharge Elimination System (NPDES) General Permit for Concentrated Animal Feeding Operations in the State of Idaho excluding Tribal lands (IDG010000). The public comment period closed December 9, 2019.

During the public comment period, the EPA received comments from the following:

Commenter	Comments
Idaho Cattle Association	ICA #1 - #22
Idaho Dairymen's Association	IDA #1 - #16
Idaho Conservation League	ICL #1 - #4
J.R. Simplot Co.	JRS #1 - #20
Food & Water Watch	FWW #1 - #18
In Defense of Animals*	IDOA #1
* 5,758 individuals submitted this comment on the draft permit to the EPA.	

This document presents the comments received and provides corresponding responses to those comments. Where comments resulted in changes to permit language, those are so noted.

The Idaho Department of Environmental Quality (IDEQ) transmitted its final CWA §401 certification to the EPA on April 8, 2019. The certification is included in the Administrative Record for this permit.

Note: The EPA has reproduced comments as accurately as possible in this document. Formatting has been modified in order to fit a single response to comment document format, including removal of footnotes. In converting from pdf formats to incorporate comments into this document, minor errors may have occurred. The original comment letters are included in the Administrative Record for the Final Permit.

Response to Comments

Comment ICA #1 (Idaho Cattle Association)
I.B.4. The Beef Environmental Control Act in the state of Idaho designates Nutrient Management Plans as trade secrets and therefore should not be subject to public comment.

> **EPA Response:** Pursuant to 40 CFR §122.23(h) the permitting authority must make available for public review and comment the notice of intent (NOI) submitted by the CAFO, including the CAFO's nutrient management plan (or NMP), and the draft terms of the nutrient management plan to be incorporated into the permit. Any subsequent revisions to the nutrient management plan must also be available to the public. 40 CFR §122.42(e)(6)(ii)(A) and (B). Furthermore, 40 CFR §122.7 states that "[i]nformation required by NPDES application forms...may not be claimed confidential. This includes information submitted on the forms...and any attachments...." Therefore, nutrient management plans are required to be subject to public comment and cannot be claimed as confidential and/or trade secrets.
>
> Idaho's regulations are not inconsistent with the federal Clean Water Act. In seeking NPDES permitting authority, Idaho explained that nutrient management plans are not considered trade secrets for those CAFOs regulated under the Clean Water Act. Idaho Attorney General's Statement, IPDES Application at p. 3. Moreover, the Beef Environmental Control Act specifically states that "[t]he provisions of [the Act] do not alter the requirements, liabilities and authorities with respect to or established by an Idaho NPDES program." Thus, even when IDEQ obtains permitting authority, nutrient management plans for regulated CAFOs will not be considered trade secrets.

Comment ICA #2 (Idaho Cattle Association)
I.B. There is no requirement for the EPA to make a timely determination on completeness of an application. Even though an operation has applied for a NOI, it would be out of compliance until the NOI has been approved by the EPA. The Idaho Cattle Association recommends that the EPA have 30 days to determine if an NOI is complete.

> **EPA Response:** A NPDES permit sets forth requirements for permittees, not requirements for the NPDES permitting authority. However, it is the EPA's intent to conduct timely review of NOIs and NMPs to provide permit coverage to a CAFO as soon as possible.

Comment ICA #3 (Idaho Cattle Association)
I.B. Existing CAFO's have no control on whether a location has been designated as historical. Also, outside organizations could attempt to designate a CAFO as historical and use the language in this permit to cause additional burdens to the CAFO. This section has nothing to do with the CWA and should be stricken.

> **EPA Response:** Pursuant to 40 CFR §122.49(b), the EPA is required to consider the applicability of the National Historic Preservation Act of 1966 and consult with the relevant State/Tribal Historic Preservation Officer(s) when issuing permits. In order to ensure that the permitting action will not have an effect on historic properties, the permit contains a condition where a CAFO is not eligible for coverage under the general permit where there will be an effect on historic properties. In such cases, the CAFO owner/operator should consult with the State/Tribal Historic Preservation Officer regarding measures needed to mitigate effects on

historic properties. These measures can be included in an individual NPDES permit. See Part I.F.1.c of the Final Permit. Since the general permit does not allow CAFOs to obtain coverage when they effect historic property, the EPA has removed the provisions regarding consultation with the State/Tribal Historic Preservation Officer as such consultation will be done during the individual NPDES permitting process. The EPA notes that the designation of historic properties is outside the scope of this permitting action.

Comment ICA #4 (Idaho Cattle Association)
I.C. Only if a permittee chooses to be repermitted can the EPA compel a permittee to re-apply for permit coverage 180 days prior to the expiration of a current permit. If a CAFO owner/operator does not choose to be repermitted, the EPA may not require him to reapply.

EPA Response: 40 CFR §122.21(d), *Duty to reapply*, requires that permittees with currently effective permits shall submit a new application 180 days before the existing permit expires. The EPA agrees that the agency cannot require a permittee to reapply for permit coverage. However, it should be noted that if the permittee does not reapply for permit coverage, the prior general permit will expire, and the permittee will no longer have permit coverage.

Comment ICA #5 (Idaho Cattle Association)
II.A.1.b. Beef cattle operations are only required to have 120 days of storage. Therefore, this should be changed to read: "During the required storage period for the operation."

EPA Response: The EPA is modifying the permit to include the same language regarding the ELGs applicable to the production area that was contained in the expired 2012 permit. Therefore, EPA has removed "of 180 days" from II.A.1.b.

Comment ICA #6 (Idaho Cattle Association)
II.A.2.a.ii. Daily inspection is not reasonable especially since many of these lines are underground. Weekly inspection should be adequate.

EPA Response: 40 CFR §412.37(a)(1)(ii) requires daily inspection of water lines, including drinking water or cooling water lines. See also response to comment IDA #12.

Comment ICA #7 (Idaho Cattle Association)
II.B.8.b. It is recommended that alternative conservation practices that are designed in consultation with a Profession Engineer (P.E.) licensed in the State of Idaho also be approved as an alternative to a 100 ft wellhead setback or 35 ft vegetative buffer.

EPA Response: This alternative has been included in the Final Permit.

Comment ICA #8 (Idaho Cattle Association)
II.A. Proposed addition: Tightlining. Many CAFO facilities have a discharge from an animal watering system that is not contaminated by manure or litter. This form of watering system is called tightlining. Tightlining involves collecting the trough water overflow directly from the top of the tank into a sealed pipe thereby not allowing for contamination. ICA recommends making the following addition: There must be no discharge of manure, litter, or process wastewater pollutants into waters of the United States from the production except as provided below:

1. *Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into waters of the United States provided:*
   a. *The production area is properly designed, constructed, operated and maintained to contain all manure, litter, process wastewater, and runoff and direct precipitation from a 25-year, 24-hour storm event for the location of the CAFO.*

2. *Tightline water trough overflow that is managed as follows.*
   a. *Water trough overflow that is discharged in a closed pipe directly from the water trough past the process area so no manure or litter contamination can occur.*
   b. *Only occurs in the winter months to prevent freezing.*
   c. *Management of tightline overflow is included in the Nutrient Management Plan*

EPA Response: Overflows from trough water systems include pollutants that may be discharged to waters of the U.S. As such, the permit needs to address these discharges. Discharges from the production area are allowed only when in compliance with Part II.A.1 of the Final Permit. No change has been made to the permit as a result of this comment.

Comment ICA #9 (Idaho Cattle Association)

III.A.2.a.i. The comments reference the IDAWM software. It is our understanding that this software is no longer in use and should be replaced with the appropriate software. In addition, an alternative provision should be added to allow a producer to demonstrate that the facility is designed with adequate storage capacity as determined by runoff and design calculations conducted by a Professional Engineer (P.E.) licensed in the state of Idaho, followed by an as built survey conducted by a Professional Engineer (P.E.) licensed in the state of Idaho.

EPA Response: The EPA acknowledges that the IDAWM software is no longer in use; however, the IDAWM spreadsheet can still be used for purposes of making this specific calculation. In addition, the EPA agrees to include alternative provisions to allow the permittee to demonstrate adequate storage capacity through alternative documentation. The EPA has made this change to the Final Permit. See IDA comment #6.

Comment ICA #10 (Idaho Cattle Association)

III.A.2.a.ii. The comments reference the use of the Washington NRCS Engineering Technical Note #23 for use in ensuring the proper operation and maintenance of wastewater and manure storage structures. It is recommended other standards that are shown to be equally protective to the Washington NRCS Engineering Technical Note #23 also be allowed to be used to prove compliance of existing wastewater and manure storage structures. This request is made due to the fact that some existing storage structures may have been previously designed using equally protective standards from other states and these standards have already been documented. Allowing the use of current documentation, a producer has on file to prove equal protection standards could potential save the producer thousands of dollars in consulting fees while attaining the same level or environmental protection.

EPA Response: As suggested by the commenter, an alternative demonstration, certified by a professional engineer, has been included in the Final Permit. See IDA comment #6.

Comment ICA #11 (Idaho Cattle Association)

III.A.2.b. The NPDES permit should not be dictating how mortalities are handled other than they need to be handled so as to not contaminate waters of the US.

> **EPA Response:** The mortality handling provisions of Part III.A.2.b are consistent with the regulatory requirements at 40 CFR §412.37(a)(4); NRCS Conservation Practice Standards 316 (Animal Mortality Facility) and 368 (Emergency Animal Mortality Management); and Idaho's regulations for Dead Animal Movement and Disposal (IDAPA 02.04.17). The requirements in the permit provide the producer significant latitude to determine schedules, on-site storage methods, final disposal methods, etc. The Permit only requires that these elements of mortality management be described in the NMP. No change has been made to the permit as a result of this comment.

Comment ICA #12 (Idaho Cattle Association)
III.A.2.f. Dairies may opt to use the P Index. We recommend changing this to read: "facilities may opt". As in the course of the next five years, other types of facilities may utilize the P Index.

> **EPA Response:** This change has been made in the Final Permit.

Comment ICA #13 (Idaho Cattle Association)
III.A.2.h. ICA recommends that actual crop removal data gathered through crop tissue testing at the time of harvest also be allowed to be used for calculating crop nutrient needs and land application rates. Actual crop removal data is the most specific and accurate data available.

> **EPA Response:** The Final Permit allows for the use of alternative methods for calculating crop nutrient needs and land application rates. In the absence of specific Land Grant University fertilizer or production guides, the NMP can identify and include the best available data, like actual crop removal data, used to determine specific land application rates for the crop, if all data and calculations are appropriately documented in the NMP.

Comment ICA #14 (Idaho Cattle Association)
III.A.2.h. ICA also recommends that land application rates of nutrients in the NMP only be calculated in terms of pounds per acre for a given crop and yield. Application volumes of manure, litter or process wastewater can later be calculated at the time of application based on the nutrient concentration of the manure, litter or process wastewater to be applied. This will better allow for adjustment of application volumes based on nutrient variability that may take place in the manure, litter or process wastewater throughout the year. Actual land application volumes applied can be recorded in the annual report along with the calculations showing that total nutrient applications did not exceed the crop nutrient requirements.

> **EPA Response:** The EPA emphasizes that the nutrient management plan submitted with the NOI *must* include application volume calculations so that the permitting authority can undertake a reasonable evaluation of the NMP. These volumes must also be included in all annual reports. However, the Final Permit now clarifies that application volumes of manure, litter and process wastewater may be calculated immediately prior to application.

Comment ICA #15 (Idaho Cattle Association)

III.A.5.b. Lists four items that EPA considers substantial changes but does not limit it to only these changes. ICA recommends defining all changes that are considered to be substantial in the permit and not leaving it open to arbitrary judgment.

> **EPA Response:** This requirement is taken directly from the regulations at 40 CFR §122.42(e)(6)(iii)(A)-(D). No change has been made as a result of this comment.

Comment ICA #16 (Idaho Cattle Association)
II.A.5.b. Again, NMP are deemed a trade secret in Idaho code and should not be available for public comment.

> **EPA Response:** See response to comment ICA #1.

Comment ICA #17 (Idaho Cattle Association)
III.B. The permit calls for any damage to the liner to be evaluated by an engineer and corrected within 30 days. ICA recommends that damage should be evaluated by an engineer and corrected by the appropriate season. 30 days does not allow adequate time to utilize a professional engineer in this process.

> **EPA Response:** Manure, litter and process wastewater storage structures are used in all seasons, so it is unclear what the commenter means by "*the appropriate season*". Since liner damage can result in significant environmental harm if it is not repaired, a timeline must be included in the Permit. However, the EPA acknowledges that there may be certain situations where a delay may be justified, and has modified this sentence in the Final Permit to read: *Any damage to the liner must be evaluated by a Professional Engineer and corrected within thirty (30) days of the damage, unless the Permitting Authority approves an alternative schedule. The permittee must submit the request within thirty (30) days of the damage, and it must include the PE evaluation of the risks of pollutant releases if the liner is not repaired immediately.*

Comment ICA #18 (Idaho Cattle Association)
III.C. This section of the permit should be omitted from the NPDES. If a facility has terminated coverage under the NPDES closure it should not be regulated by the permit.

> **EPA Response:** The Facility Closure provisions in Part III.C of the permit stipulate the protective measures that must be taken in order to close the facility prior to terminating permit coverage. The EPA notes that discharges from the facility following termination of permit coverage may constitute violations of the Clean Water Act. Thus, careful attention to closure procedures is in the best interest of the operator. No change has been made to the permit as a result of this comment.

Comment ICA #19 (Idaho Cattle Association)
IV.B. ICA recommends that the annual reports only be required to contain field and corresponding application information for fields listed in the facilities NMP that received manure, litter or process wastewater in that given year. Fields that did not receive manure, litter or process wastewater should be allowed to be excluded from the annual report until which time they receive manure, litter or process wastewater. This is the processing utilized by other states in their NMP/NPDES annual reporting processes.

EPA Response: Annual reports need only include information on fields that received manure, litter and process wastewater during a given reporting year. This requirement has been clarified in the Annual Report Template of the Final Permit.

Comment ICA #20 (Idaho Cattle Association)
IV.B. Many of the reporting requirements are considered confidential. ICA recommends not submitting information in an annual report, but maintaining this information on site, which EPA can review.

EPA Response: Per 40 CFR §122.42(e)(4) all of the reporting requirements in the permit are required elements of annual reports that must be submitted to the permitting authority. See response to comment ICA #1.

Comment ICA #21 (Idaho Cattle Association)
IV.C. ICA recognizes the former WOTUS rule has been vacated and the latest definition needs to be used in the permit.

EPA Response: See response to comment JRS #20.

Comment ICA #22 (Idaho Cattle Association)
IV.C. ICA's understanding is that any manure that spills from a truck on the way to a stockpile area or field is considered a discharge. It is also ICA's interpretation, leaving a feedlot and driving on to a roadway with manure on your tires you drive through a feed yard, it would be considered a discharge. This standard is unreasonable and would be impossible to manage.

EPA Response: A spill to a roadway is only a discharge if it reaches waters of the U.S. Thorough and timely clean-up should prevent an actual discharge. If the commenter is requesting release from responsibility for spills that result in a discharge of pollutants to waters of the U.S., the EPA cannot provide such assurance in an NPDES permit. With respect to expectations regarding spill response please see 40 CFR §122.41 *Duty to Mitigate* (Part V.B.4 of the Final Permit) and 40 CFR §122.41(l)(6)(i) *Noncompliance Reporting* (Part IV.C, Unauthorized Discharges and IV.E, Spills/Releases of the Final Permit).

Comment IDA #1 (Idaho Dairymen's Association)
With the transfer of permitting authority from EPA to the Idaho Department of Environmental Quality ("IDEQ") rapidly approaching (July 1, 2020); EPA's proposed reissuance of a NPDES General Permit for CAFOs in Idaho is ill-timed and inadequately informed by the needs, requirements and processes of dairy environmental management in Idaho. IDA recommends that issuance of a new General Permit for dairy operations and other CAFOs in Idaho be delayed until IDEQ takes over permitting authority and has an opportunity to work with the Idaho State Department of Agriculture ("ISDA''), IDA and other interested parties in Idaho to develop a permit that is tailored to the meet the challenges, needs and expectations of dairy environmental management in Idaho.

Among regulatory agencies, ISDA has the most direct, in-depth knowledge and experience with dairy environmental management and administration in Idaho. More than any other government agency, ISDA understands dairy nutrient management planning and containment structure construction and maintenance. IDA has participated in IDEQ's workgroup developing guidance for the anticipated IPDES CAFO permits to ensure that IDPES permit provisions and procedures are clear, consistent with the law and dairy environmental management in Idaho, and do not create conflicts between IPDES permitting

and dairy environmental management administration and enforcement by ISDA. Unfortunately, ISDA has not been sufficiently involved in the development of EPA's Draft Permit. This is evident from several proposed permit provisions that reference, incorporate or apply guidance documents and standards that are not used or pertinent to dairy environmental management in Idaho. As proposed, EPA's draft permit contains numerous provisions that will create confusion and conflicting standards for regulatory agencies and permittees, as well as undue hardship for dairy operators.

If EPA does not postpone reissuance of an NPDES Permit to allow IDEQ to develop and issue a permit that will work in Idaho, IDA recommends that a section be added to the beginning of the permit that explains the posture and timeline of this permit. At a minimum, it should explain that: (1) this permit will be enforced by EPA until Idaho gains primacy of its CAFO permits in 2020; (2) once Idaho gains primacy, this permit will be enforced by Idaho agencies; (3) the effective period of this permit and Idaho's intent to use this permit as the IPDES permit until it writes its own; and (4) precisely what Idaho agencies must be contacted for each requirement once Idaho gains primacy of the permit. There are numerous points in the permit that refer to reports being made to EPA, but they do not indicate to whom those reports must be made once Idaho takes primacy. Because this Draft Permit will become the Idaho Pollution Discharge Elimination System (IPDES) Program permit in 2020, we feel it is necessary to clearly delineate this information at the beginning of the document so that permittees can clearly understand the framework and reporting requirements of the final permit.

IDA also encourages EPA to recognize and implement the common sense and practical approach that IDA has taken in recommending the solutions contained herein. CAFOs, and especially dairies, are dynamic operations with complex operational challenges. As such, the requirements that permittees are held to should be realistic and reflect actual working conditions of a dairy, rather than idealistic requirements from text books that are not practically attainable on the ground during the normal course of operation. *As* a group that represents real-life, potential permittees, IDA hopes that this collaborative approach will provide insight to bridge the gap between agency expectations and what is realistically attainable by the permittees themselves.

> **EPA Response:** ISDA and IDEQ have a Memorandum of Understanding between the agencies that primarily deals with inspections once IDEQ obtains CAFO permitting authority; however, ISDA will not have any NPDES permitting or enforcement authority. Once general permitting authority is transferred on July 1, 2020, IDEQ is the sole IPDES permitting authority for CAFOs in the State. The EPA and IDEQ developed the phased schedule for transfer of the NPDES program with the specific understanding that the CAFO General Permit will be in place prior to the transfer of the general permitting program on June 1, 2020. For additional details on roles and responsibilities associated with the transfer of the Idaho NPDES program see: https://www.epa.gov/npdes-permits/idaho-npdes-program-authorization. As explained in the Fact Sheet, once the permit transfers to IDEQ, all documentation required by the permit would be sent to IDEQ rather than to the EPA and any decision under the permit stated to be made by the EPA or jointly between the EPA and IDEQ will be made solely by IDEQ. See Fact Sheet at p. 4. No further clarification is necessary with regard to the permit.

Comment IDA #2 (Idaho Dairymen's Association)
I.F.2 IDA recommends changing this section to read as follows:

Pursuant to 40 C.F.R. §122.28(b)(3). EPA may ~~at any time~~ require any facility authorized by this permit to apply for, and obtain, an individual NPDES permit. EPA will notify the operator, in writing,

that an application for an individual permit is required and will set a time for submission of the application. Coverage of the facility under this general NPDES permit is automatically terminated when: (1) the operator fails to submit the required individual NPDES permit application within the defined time frame; or (2) the individual NPDES permit is issued by EPA.

EPA Response: This change has been made to the Final Permit.

Comment IDA #3 (Idaho Dairymen's Association)
I.F.3. This section states that an owner/operator may request to be covered under an individual permit pursuant to 40 CFR § 122.28(3)(iii). However, there is an error with this CFR reference that may confuse permittees. The correct reference should be to 40 C.F.R. § 122.28(b)(3)(iii). IDA recommends correcting this section to read asfollows:

Any owner/operator who believes that the terms and conditions of this general permit are not appropriate for his/her CAFO facility, either prior to or after obtaining coverage under this permit, may request to be covered under an individual permit pursuant to 40 CFR § 122.28(b)(3)(iii). The owner/operator shall submit an application for an individual permit (Form 1 and Form 2B) with the reasons supporting the application to EPA If a final, individual NPDES permit is issued to an owner/operator otherwise subject to this general permit, the applicability of this NPDES CAFO general permit to the facility is automatically terminated on the effective date of the individual NPDES permit. Otherwise, the applicability of this general permit to the facility remains in full force and effect.

EPA Response: The EPA thanks the commenter for catching this error. It has been corrected in the Final Permit.

Comment IDA #4 (Idaho Dairymen's Association)
II.B.8. This section discusses compliance alternatives to the 100-feet land application set back. Although IDA understands the intent of this section, it believes that its vague language may be open to interpretation and that it may confuse permittees. IDA recommends making the following changes to this section to provide clarity for permittees:

Land application setback requirements. Unless the permittee exercises one of the compliance alternatives of this section as provided below in (a) or (b), manure, litter, and process wastewater may not be applied closer than 100 feet to any down- gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to service waters.

a. *Vegetated buffer compliance alternative. As a compliance alternative, 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.*

b. *Alternative practices compliance alternative. As a compliance alternative, the CAFO may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot setback. An adequate demonstration may include the use of site-specific data using a tool such as the Idaho NRCS Water Quality Technical Note #6, Idaho Nutrient Transport Risk Assessment (INTRA) (Appendix E) or the Idaho Phosphorus Site Index (Appendix I) , and associated implementation of*

alternative conservation practices recommended as a result of these tools.

EPA Response: These changes have been made to the Final Permit.

Comment IDA #5 (Idaho Dairymen's Association)
II.B.9. This section states that there "shall be no dry weather discharge ... to waters of the United States ... through subsurface flows." Upon first review, this reference is troublesome because it appears to imply that the Clean Water Act (CWA) has authority over groundwater with its reference to "subsurface flows," which is subject to debate as the law regarding this authority is currently unsettled. IDA recommends striking this sentence from this section, as its intended message is clear from the first sentence of this section without including unsettled law that is subject to debate:

No Dry Weather Discharge. There shall be no dry weather discharge of manure, litter, or process wastewater to a water of the United States from a CAFO as a result of the application of manure, litter or process wastewater to land areas under the control of the CAFO. ~~This prohibition includes discharges to waters of the United States through tile drains, ditches or other conveyances, irrigation related flow and subsurface flows.~~

EPA Response: The term *subsurface flows* does not refer to groundwater in this context. The intent of this provision was to prohibit discharges through tile drains, ditches and other man-made conveyances and activities whether above, at or below the ground surface. To prevent confusion, the EPA has removed the term from this provision. The last sentence of Part II.B.9 in Final Permit now reads: *This prohibition includes discharges to waters of the United States through tile drains, ditches or other conveyances and irrigation return flows.*

Comment IDA #6 (Idaho Dairymen's Association)
III.A.2.a.ii. This section requires permittees to complete Washington NRCS Engineering Technical Note #23 for each wastewater or manure storage structure and to include the results of the evaluation in the permittee's NMP. IDA believes it is inappropriate to incorporate another state's technical note into the Idaho Draft Permit when this technical note has not been adopted by Idaho state agencies. This technical note was created to address geographic conditions in the state of Washington, not Idaho. Furthermore, wastewater and manure storage structures in Idaho have been constructed to comply with NRCS Appendix 10D and IDAPA 02.04.14.030.01, which have different requirements than Technical Note #23. As such, IDA fears that use of this note will create confusion and conflicting standards for regulatory agencies and permittees, as well as undue hardship for dairy operators who have constructed their wastewater and manure storage structures to be compliant with Idaho standards, rather than Washington standards. IDA recommends providing flexibility by allowing producers to forego use of Technical Note #23 by showing compliance with NRCS Appendix 10D and IDAPA 02.04.14.030.01through the confirmation of a professional engineer. As such, this section should be amended to read as follows:

The CAFO covered by this permit must ensure the proper operation and maintenance of wastewater and manure storage structures by confirming compliance with NRCS Appendix 10D and IDAPA 02.04.14.030.01 through a professional engineer, or by completing the Washington NRCS Engineering Technical Note #23, January 2013 (Appendix D), for each wastewater or manure storage structure. If the evaluation of the CAFO's wastewater or manure storage structures identifies deficiencies in the operation or maintenance of the structures, the CAFO must identify

measures to address those deficiencies in its NMP. If the permittee chooses to confirm compliance through the use of an engineer, then the NMP must include the results of the engineer's evaluation. If the permittee chooses to use Technical Note #23, then ~~T~~the NMP must include the results of the evaluation using Washington NRCS Engineering Technical Note #23, January 2013 (Appendix D).

> **EPA Response:** This alternative has been included in the Final Permit. See Response to Comment ICA #10

Comment IDA #7 (Idaho Dairymen's Association)

III.A.2.e. This section begins with the broad statement that a permittee must: "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 or contaminants." There is no definition of "chemicals or contaminants" in this permit. IDA is concerned that the first sentence may be interpreted to prohibit the continued use of generally accepted industry agents that are required for animal husbandry and to clean milking parlors as mandated by the Pasteurized Milk Ordinance. The agents used for these practices inevitably enter wastewater storage structures. It is unrealistic to separate and divert cleaning and animal husbandry agents from storage structures, or require permittees to "specifically design" their structures to treat them. Preventing a hoof treatment from entering a storage structure, for example, is not realistic or achievable, when cows walk through the water and manure that enters storage structures. Accordingly, this section must be clarified so that it is not interpreted to prohibit the use of these generally accepted industry cleaning (and required by the Pasteurized Milk Ordinance) and animal husbandry agents. IDA recommends amending this section as provided below to provide this clarification for permittees:

*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 or contaminants. For purposes of this permit, agents that have been used for cleaning to comply with the Pasteurized Milk Ordinance and for animal husbandry purposes, such as hoof baths, that are generally accepted by the industry, shall not be considered chemicals or contaminants that may not enter storage systems. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the management of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner sufficient to prevent pollutants from entering the manure, litter, or process wastewater storage structure or waters of the United States. The NMP must include references to any applicable chemical storage and handling protocols and incorporate specific **BMPs** and actions that will be taken to prevent the improper disposal of chemicals and other contaminants into any manure, litter, process wastewater, or storm water storage or treatment system. The NMP should also consider chemical handling plans for the protection of wells, water supplies, and any drainage ways that are close to chemical storage and handling areas.*

> **EPA Response:** Pursuant to 40 CFR §122.42(e)(1)(v), chemicals and other contaminants handled on-site may not be disposed of in any manure, litter or process wastewater or stormwater storage or treatment system unless that system is specifically designed to treat those chemicals and contaminants. As a practical matter, the EPA concedes that residues of these chemicals or contaminants may end up in storage or treatment systems as a result of standard animal husbandry practices. A r*esidue*, in this context, consists of trace amounts of a material, or its

breakdown product(s), when that material has been employed or applied for its intended use using appropriate methods, amounts and/or rates. These would not constitute permit violations. However, these agents *are* considered chemicals and contaminants which should not be disposed of in manure, litter, process wastewater or stormwater storage and treatment systems. There is a distinction between residues in the discharge and disposing of these materials into the storage or treatment system for waste disposal, spill clean-up, container rinsing or other purposes. The latter set of actions are not authorized (i.e., the facility should not actively dispose of these chemicals in manure, litter, processes wastewater or stormwater storage and treatment systems). No change to the permit has been made as a result of this comment.

Comment IDA #8 (Idaho Dairymen's Association)

III.A.2.f. As written, this section can be interpreted to require all land application areas to achieve a low risk rating under the INTRA or the P Index by use of the phrase "[t]he NMP must identify all fields that have a Medium or greater risk assessment and identify appropriate site-specific conservation practices required to reduce the risk assessment for each specific field to a Low rating." This statement is unnecessarily restrictive and contradicts the function and use of these indices. The **P** Index and INTRA are designed to reduce risk, but **do not** require all fields to achieve a low risk rating. Instead, manure must be applied at varying levels that correspond to the field's risk rating, with higher risk fields having lower application rates than low risk fields. The **P** index and INTRA are designed to operate at all ratings and it would undermine the function and utility of the indices to require every field to operate at a low risk rating. This section essentially requires a facility to control all environmental variabilities in order to land apply under the indices, which is not realistic or consistent with the indices. IDA recommends that the section be amended to accurately reflect the operation of the indices as follows:

*Identify appropriate site-specific conservation practices to be implemented on the land application areas, including as appropriate buffers or equivalent practices as stipulated in Section 11.B.8, to control runoff of pollutants to waters of the United States. The NMP must include appropriate conservation practices identified by evaluating each land application area using the Idaho NRCS Water Quality Technical Note #6, Idaho Nutrient Transport Risk Assessment (INTRA) (Appendix E). Dairies may opt to utilize the Idaho Phosphorus Site Index (P Index) (Appendix I). The NMP must include the results of the INTRA or P Index evaluations. ~~The NMP must identify all fields that have a Medium or greater risk assessment and identify appropriate site specific conservation practices required to reduce the risk assessment for each specific field to a Low rating.~~ All operations must follow guidance provided by INTRA and the **P** Index. If the site-specific conservation practices are NRCS conservation practice standards, the NMP must include provisions to operate and maintain those site-specific conservation practices according to the specific NRCS conservation practices standard. If the owner/operator proposes alternative practice or performance standards, the NMP must describe and cite those standards so that EPA can perform an adequate review. In addition, the NMP must include a schedule for implementation of site-specific conservation practices and proper operation and maintenance procedures.*

EPA Response: The EPA agrees with the commenter's statement. This change has been made to the Final Permit.

Comment IDA #9 (Idaho Dairymen's Association)

III.A.2.g.iii. This section requires a NAPT certified laboratory to analyze all manure and soil samples. Although NAPT certified laboratories are appropriate for soil test analyses, this is not the correct certification for laboratories that analyze manure and compost samples. The proper certification authority for manure testing is the Minnesota Department of Agriculture, and once approved, laboratories are referred to as Manure Analysis Proficiency Laboratories. A list of these approved laboratories can be found at http://www2.mda.state.mn.us/webapp.lis/maplabs.jsp. IDA recommends amending this section to reflect that NAPT laboratories must analyze soil samples, while Manure Analysis Proficiency Laboratories must analyze manure samples, as follows:

~~Manure and~~ soil samples must be analyzed by a laboratory certified by the North American Proficiency Testing Program (NAPT). Manure samples must be analyzed by a certified Manure Analysis Proficiency Laboratory.

> **EPA Response:** The EPA agrees with the commenter's statement. This change has been made to the Final Permit.

Comment IDA #10 (Idaho Dairymen's Association)

III.C.1.c. This section requires facility closure if the permittee "ceases operation." This language is problematic, because it may be interpreted to require closure when a permittee ceases its dairy operation but plans to sell it to a new owner that will need the facility when it takes over and resumes operation. The proper standard for closure is stated in the highlighted portions of the attached Idaho NRCS Practice Standard Code 360 (referenced in subsection d. of this section). Standard 360 defines "Waste Facility Closure" as: "The decommissioning of a facility where agricultural waste has been treated or stored, and is no longer used for the intended purpose." Standard 360 applies "to an agricultural waste facility or livestock production site that is no longer needed as a part of a waste management system and is to be permanently closed or converted for another use." This section also describes the requirements for maintaining a facility that is not in use for 12 consecutive months. IDA understands that liners must not be allowed to dry out to prevent cracking. However, we feel that this provision deserves further discussion between EPA, ISDA, and IDA, as it could be interpreted to mean that a pond would need to be entirely or mostly refilled with clean water when not in use, including when heading into winter months. This is problematic for dairies who have emergency reserve lagoons that may go dry for more than twelve months, as it would mean that they would have to go into winter months with their emergency storage structure full of clean water, which would not be sensical and would also be contrary to ISDA's direction to operators to head into winter months with as much capacity as possible to ensure adequate storage for when land application is inappropriate. IDA is not aware of any legal or scientific authority that would support the broad language of this protocol, and would like to see the citing authority for this requirement. IDA requests that further discussion be had on how to make this a practical requirement that complies with ISDA's directions to operators and to prevent an interpretation where an operator is expected to keep reserve lagoons entirely full, thereby rendering those lagoons useless for emergency situations. We also suggest separating this requirement from the prior section for clarity. Furthermore, "financial viability" of a dairy operation is a an undefined, vague, and improper standard for facility closure. IDA recommends amending this section as follows:

c. *All lagoons and other earthen or synthetic lined basins that are no longer needed as a part of a waste management system and are to be permanently decommissioned or converted for another use must be properly closed ~~if the permittee ceases operation~~ consistent with the Idaho*

NRCS Practice Standard Code 360 contained in Natural Resources Conservation Service Field Office Technical Guide (Appendix B). Consistent with this standard the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittee's NMP, unless otherwise authorized by EPA.

d. *~~In addition,~~ For Aany lagoon or other earthen or synthetic lined basin that is not in use for a period of twelve (12) consecutive months ~~must be properly closed unless the facility if financially viable, intends to resume use of the structure at a later date, and~~ but will not be permanently decommissioned or converted to another use, the permittee shall ~~either~~:*

   i. *Maintain~~s~~ the structure as though it were actively in use in order to prevent compromise of structural integrity pursuant to ISDA direction and/or protocols; ~~or~~*
   ~~ii. Remove 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.~~
   iii. *The permittee shall notify EPA, in writing, of the action taken, and shall conduct routine inspections, maintenance, and record keeping as though the structure were in use. Prior to restoration of use of the structure, the permittee shall notify EPA, in writing, and provide the opportunity for inspection. The permittee shall properly handle and dispose of the water used to preserve the integrity synthetic or earthen liner during periods of non-use in accordance with the NMP.*

~~d. All closure of lagoons and other earthen or synthetic lined basins must be consistent vii.th the Idaho NRCS Practice Standard Code 360 contained in Natural Resources Conservation Service Field Office Technical Guide (Appendix B). Consistent with this standard the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittee's NMP, unless otherwise authorized by EPA.~~

e. *Unless otherwise authorized by EPA, 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 operation,~~ twelve (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.*

2. *Closure Procedures for Other Manure, Litter, or Process Wastewater Storage and Handling Structure*

   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 twelve (12) months after 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. 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 document its transfer from the permitted facility in accordance with off-site transfer requirements specified in this permit Section III.D, unless otherwise authorized by EPA.

EPA Response: The EPA agrees with the commenter that some clarification on facility closure would be helpful. Some of the suggested edits have been included in the Final Permit in order to better clarify the distinction between permanent closure and temporary cessation of activities. The Final Permit includes the suggested changes to Part c. The Final Permit includes most of the suggested changes to Part d, except the reference to ISDA protocols in (i). The Final Permit does not include the deletion suggested by the commenter in Part e. The final permit does include the changes suggested in Part 2.

Comment IDA #11 (Idaho Dairymen's Association)
IV.A.1.b. This section requires permittees to record weekly depth of the manure and process wastewater in storage via a depth marker. However, permanent and accurate installation of depth markers is nearly impossible due to environmental conditions. Instead, IDA proposes a more practical method of recording structure levels by noting the feet of freeboard on the pond. This method is currently employed by inspectors and is a more accurate, reliable, and practical way of measuring storage levels. IDA recommends that the language be amended as follows:

b. Weekly records of the depth of the manure and process wastewater in storage, containment and/or treatment structure(s), as applicable, as indicated by the depth marker under Section II.A.2.b,or by measuring the feet of freeboard of the structure ;

EPA Response: Pursuant to 40 CFR §412.37(a)(2), depth markers are required for all open surface liquid impoundments at dairy and cattle (other than veal) operations. In addition, depth markers provide immediate clarity on the amount of freeboard, which is a much more effective management tool. The permittee has significant latitude to determine the design and installation of the depth marker as long as the intent – "at-a-glance" data on available freeboard – is met. No change has been made to the permit as a result of this comment.

Comment IDA #12 (Idaho Dairymen's Association)
IV.A.1.e. This section requires permittees to keep a record of all water line inspections, including drinking and cooling water lines. However, the permit does not explain howor when water lines must be inspected. Taking a practical and common-sense approach, IDA suggests that EPA expects that water lines be inspected when an operational abnormality or change is observed. For example, if water pressure is lower than normal, then it would be practical to inspect the water lines, while it would not be practical to dig up all buried water lines on a weekly basis when no operational abnormality is observed. IDA recommends that the language be amended as follows to reflect a more practical approach:

e. ~~Records documenting the inspections of all water line inspections, including drinking and cooling water lines and whether or not leaks were discovered.~~ Record water line leaks and/or abnormalities discovered during the normal course of operation through low water pressure or other signs indicating a possible leak or abnormality. Document any repairs and/or corrective actions taken to prevent further leaking or correct the abnormality;

EPA Response: 40 CFR §412.37(a)(1)(ii) requires daily inspection of water lines, including drinking water or cooling water lines. The specific means of inspections are left to the discretion of the permittee and should be described in the NMP. Daily visual inspections for anomalies

with the appropriate follow-up, as described by the commenter, is appropriate. No change has been made to the permit as a result of this comment.

Comment IDA #13 (Idaho Dairymen's Association)
V.A.8. This section discusses changes in the discharge of toxic pollutants. It is IDA's understanding that CAFOs are not allowed to discharge toxic pollutants to begin with. Therefore, this section does not seem applicable to a general CAFO permit. IDA recommends that this section (V.A.8) be entirely stricken.

EPA Response: All provisions in Part V of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits.

Comment IDA #14 (Idaho Dairymen's Association)
V.B.5. This section appears to have been copied and pasted from another type of general permit, such as a municipal permit, and does not seem to be applicable to a general CAFO permit. Proper operation and maintenance protocols have already been addressed by other provisions in the permit citing applicable NRCS and other CAFO- specific protocols. Therefore, it is inappropriate to include it in this permit. IDA recommends that this section (V.B.5), be entirely stricken.

EPA Response: All provisions in Part V of the permit are standard conditions, specified in 40 CFR §122.41, and must be included in all NPDES permits.

Comment IDA #15 (Idaho Dairymen's Association)
IDA appreciates the opportunity to comment on this Draft Permit.

EPA Response: The EPA thanks the Idaho Dairymen's Association for their comments on the Draft Permit.

Comment IDA #16 (Idaho Dairymen's Association)
IDA recommends that issuance of a new General Permit for dairy operations and other CAFOs in Idaho be delayed until IDEQ takes over permitting authority and has an opportunity to work with ISDA, IDA and other interested parties in Idaho to develop a permit that is tailored to the meet the challenges, needs and expectations of dairy environmental management in Idaho.

If EPA does not postpone reissuance of an NPDES Permit to allow IDEQ to develop and issue a permit that will work in Idaho, IDA respectfully requests that its concerns and solutions be addressed and implemented in the final permit. IDA also welcomes the opportunity to meet with EPA and discuss the changes detailed herein.

EPA Response: See response to comment IDA #1. The EPA welcomes ongoing discussions with IDA.

Comment ICL #1 (Idaho Conservation League)
Coverage under the CAFO general permit. Under the last iteration of this general permit, a grand total of **zero** CAFO facilities in Idaho (out of 365 total) applied for coverage. According to the EPA's *2018 NPDES CAFO Permitting Status Report*, many states have at least 50% permitting coverage of their CAFOs, with some states approaching full coverage. The list of close to fully permitted CAFOs includes states like Michigan, Pennsylvania, and Wisconsin – all of which have similar numbers of total facilities

to Idaho.

We are skeptical that not a single CAFO facility in Idaho merits coverage under this general permit. A cursory glance at satellite imagery for the Snake River Plain, where the majority of Idaho's large CAFOs are located, highlights the fact that a number of these facilities that are in close proximity to rivers, creeks, or irrigation canals that drain into waters of the United States. We do not include this comment to assert that any specific facility is currently out of compliance or discharging without a permit. Rather, we are emphasizing that there is a reasonable potential for some CAFOs to need NPDES permitting coverage. It is hard to believe that out of 365 CAFOs in Idaho, not a single one has the potential to have CWA- regulated discharges.

The mere existence of this permit does not protect Idaho's water quality if there is not a single CAFO facility regulated by it. Thus, while we very much appreciate the amount of work that EPA has done to revise and strengthen this permit, the true value of that work will only be realized once facilities are regulated. We urge EPA/IDEQ to conduct a detailed assessment of existing CAFO facilities to evaluate which ones do indeed require coverage and then take the appropriate next steps to ensure that those facilities apply for coverage, and adhere to the terms and conditions pursuant to this general permit. Short of proactive assessment, the EPA/IDEQ should make clear that there is an onus on the CAFOs themselves to evaluate whether they have the potential for unauthorized discharges, and if so, to take the steps to apply for coverage under this general permit.

> **EPA Response:** The EPA acknowledges the comment.

Comment ICL #2 (Idaho Conservation League)

Monitoring and compliance. Monitoring is an essential component of any NPDES discharge permit because it allows both the agencies and the public the ability to track facility compliance. Without proper monitoring requirements, not only is the public left in the dark, but the regulatory agencies do not have the necessary information to ensure compliance with their permits. As stated in 40 C.F.R. § 122.44, a permit with effluent limitations "*requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards*." Although regulatory agencies seem to view CAFO monitoring as more difficult than for other point sources, there are no exemptions to baseline compliance monitoring requirements.

The Draft Permit currently lacks the monitoring requirements necessary to allow EPA and IDEQ to provide true oversight of the permittees' compliance with the water quality-based provisions in the permit. It is absolutely necessary for EPA to include periodic, representative water sampling in this permit and require the same discharge monitoring reports that all other industry point sources have to submit. The existing monitoring requirements in the Draft Permit serve to help calculate agronomic rates of manure application, but do not enable EPA to determine whether the waste was actually applied properly in accordance with CAFO nutrient management plans. Thus, it will be very difficult, if not impossible, to monitor discharges appropriately.

> **EPA Response:** The CAFO regulations prohibit regular/ongoing discharges and establish monitoring requirements in CAFO permits that focus on maintaining that framework, e.g., daily and weekly inspections in the production area, manure and soil analyses and land application equipment inspections. These have been incorporated into the permit. No change has been made to the permit as a result of this comment.

Comment ICL #3 (Idaho Conservation League)
Water-quality based provisions. We appreciate the inclusion of the water-quality based provisions in this permit (Provisions 9 and 10). We agree with EPA that both of these provisions are necessary to protect Idaho's waterways from CAFO pollution and strongly recommend that they be retained in the final permit.

Provision 10 prohibits the application of any manure, litter or process wastewater when the land is frozen or snow-covered, or when the soil is saturated with water. EPA presents an impressive table of peer- reviewed literature to support their decision to include this provision in the permit. As stated by EPA in the Fact Sheet, "*the weight of scientific evidence clearly demonstrates high risks of runoff from winter manure application and relative ineffectiveness of BMPs in curtailing that risk*." We too have serious concerns regarding the ongoing winter application of manure on Idaho CAFOs and appreciate the clear prohibition of that practice in this permit.

EPA Response: The EPA acknowledges the comment.

Comment ICL #4 (Idaho Conservation League)
Coordination with the Idaho State Dept. of Agriculture. The Idaho State Department of Agriculture (ISDA) plays a significant role in the oversight and regulation of CAFOs in Idaho. In order to ensure the necessary level of protection is provided to Idaho's waters, it is critical that the EPA and the ISDA are coordinating on the implementation of this general permit. We request that the EPA discuss the level of coordination between ISDA and EPA on the development of this general permit and how they plan to collaboratively identify and engage facilities that require coverage under this general permit. Additionally, we request that EPA provide a copy of any binding agreements (legal or otherwise) between the two agencies related to compliance with the requirements of this general permit. If such an agreement does not exist, we request that EPA explain how it will ensure that ISDAs oversight and regulation of CAFOs in Idaho will comply with the requirements of this general permit.

EPA Response: As part of Phase III of the Idaho NPDES Program Authorization (IPDES), IDEQ will assume authority for general permits (including the CAFO general permit) on July 1, 2020. Multiple documents associated with this transfer of authority, including documentation of Idaho's plans and commitments for administering the program, are available at: https://www.epa.gov/npdes-permits/idaho-npdes-program-authorization. See also response to comment IDA#1.

Comment JRS #1 (J.R. Simplot Co.)
As indicated in the EPA draft 2019 NPDES General Permit for CAFOs in Idaho Fact Sheet, EPA has authorized Idaho Department of Environmental Quality (IDEQ) to implement a NPDES permit program and IDEQ will obtain permitting authority for general NPDES permits on July 1, 2020. Based on the rapidly approaching transition schedule of these permits from EPA to IDEQ authority, the proposed reissuance of the NPDES General Permit for CAFOs in Idaho should be delayed until after the transition is completed. In addition, the NPDES General Permit for CAFOs in Idaho should be drafted by IDEQ.

EPA Response: See response to comment IDA #1.

Comment JRS #2 (J.R. Simplot Co.)
In general, this draft 2019 permit has numerous requirements that are more detailed compared to the

2012 NPDES General Permit for CAFOs in Idaho. These more rigorous requirements are overly burdensome in they require a high level of technical knowledge to implement, have a high cost of compliance, and will be time-consuming to implement. These requirements are going to be difficult for a large operation to implement and likely not possible for small operations. We recommend that EPA consider the effect this permit will have on the economic viability of CAFO operations.

> **EPA Response:** The CAFO permit is applicable to Large CAFOs, not small operations. Small operations would only be subject to the CAFO permit if those operations were designated as regulated CAFOs pursuant to 40 CFR §122.23(c). While compliance is certainly not without cost, provisions identical or similar to those in this permit are being implemented by operations nation-wide. The EPA completed thorough cost-benefit analyses for the CAFO regulations during the rulemaking process. The EPA is not required to complete economic analyses for each permit action.

Comment JRS #3 (J.R. Simplot Co.)
In the permit there are numerous requirements to comply with specific standards or specific guidance documents. If alternative methods are available that achieve compliance with the permit, these alternative methods should be allowed. The permit should not dictate the methods, but rather the required results.

> **EPA Response:** The EPA evaluated the alternative methods and tools included in the permit for water quality outcomes and practical implementability. Where appropriate, the EPA has included the option of pursuing an alternative method. In general, NPDES CAFO permits specify the best management practices (i.e., methods) to be implemented rather than numeric effluent limits (i.e., outcomes), which are typical in NPDES permits for other sectors. If a permittee/CAFO operator believes that a facility warrants different types of permit conditions than what is in the CAFO permit, that permittee/CAFO operator may request to be covered under an individual permit. See CAFO Permit at Part I.F.3.

Comment JRS #4 (J.R. Simplot Co.)
Also, in Idaho, the State Department of Agriculture (ISDA) has historically had a role in regulating CAFOs. Simplot believes that it would be beneficial for the regulated community to understand which of these agencies will be designated as the lead agency and the roles each will have in permit implementation: ISDA, IDEQ, and EPA.

> **EPA Response:** Prior to July 1, 2020, the EPA is the NPDES permitting authority over general permits. After July 1, 2020, IDEQ assumes NPDES permitting and enforcement authority over general permits in the State of Idaho, other than on Tribal Lands, where the EPA will continue to administer the NPDES program. ISDA has no NPDES regulatory authority, although the agency may play a technical assistance/support role and also implement state regulations outside the scope of the NPDES program. See response to comment IDA #1.

Comment JRS #5 (J.R. Simplot Co.)
I.B. With respect to Item 4, there is no requirement for EPA to make a timely determination on completeness of a Notice of Intent (NOI) and Nutrient Management Plan (NMP). Simplot recommends EPA have 30 days to determine if an NOI and NMP are complete.

> **EPA Response:** See response to comment ICA #2.

Comment JRS #6 (J.R. Simplot Co.)
I.B. Item 5 states "In order to determine if an expansion is a new source, the applicant must submit to EPA information describing the expansion and a map showing the location of the expansion. If EPA determines the expansion meets the new source definition, the owner/operator must prepare and submit an EID or draft EA as described above." Simplot comments that the facility be responsible for making this determination. This would not eliminate the facility's responsibility to comply with NEPA requirements for expansions or eliminate EPA's authority to enforce against the facility if they made an improper determination. It would simply streamline the process. If these determinations are going to be made by EPA, it is likely to delay projects and affect the economic viability of the facility. If EPA is going to make the determination, then Simplot recommends that there needs to be a requirement for EPA to make the determination within 30 days. A delay beyond 30 days would likely be very costly to the facility and require coordination for the long term raising of cattle at an alternative CAFO location, which may be of considerable distance from the facility.

> **EPA Response:** Pursuant to 40 CFR §6.200, the EPA is the permitting authority who must make a determination on whether a facility expansion constitutes a "new source." The regulations do not stipulate a specific timeline for making the determination. The EPA expects that it would need to work with the operator to make a determination regarding "new source" status.
>
> The EPA notes that new source determinations may apply after July 1, 2020 with respect to applicability of certain provisions in the CAFO ELGs. However, NEPA only applies to federal actions (EPA permit issuance, in this case). As such, after July 1, 2020, a NEPA analysis would not be required for new sources subject to this permit because IDEQ will be the permitting authority.

Comment JRS #7 (J.R. Simplot Co.)
II.A. Sections 1.a. and 1.b. appear to be the same requirement but just stated in different terms. Simplot recommends eliminating 1.b.i. - vii and keeping Section 1.a. as is, with the exception of specifying a 120 day storage period for manure, litter, and process wastewater, as is currently required for wastewater storage in Idaho, rather than the 180 day storage period listed in the draft 2019 NPDES General Permit for CAFOs in Idaho, so this section becomes:

A. Effluent Limitations and Standards Applicable to the Production Area

Except as provided I Section II.A.3., there must be no discharge of manure, litter, or process wastewater into wasters of the United States from the production area except as provided below.

1. *Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into waters of the United States provided:*

    a. *The production area is 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 for a storage period of 120 days.*

EPA Response: These are not redundant requirements. (a) stipulates the precipitation duration and frequency for the design and b. stipulates many of the design criteria and objectives. See also response to comment ICA #5.

Comment JRS #8 (J.R. Simplot Co.)
II.A. Section 2.a.ii. requires daily visual inspections of all water lines, including drinking water and cooling water lines. Simplot recommends EPA clarify if daily visual inspections apply to aboveground water lines or underground water lines, or both. With regards to frequency of visual water line inspections, Simplot recommends it be revised to weekly rather than daily inspections, as weekly inspections should be sufficient.

EPA Response: See responses to comments ICA#6 and IDA#12.

Comment JRS #9 (J.R. Simplot Co.)
II.B. Section 2. uses the phrase "to achieve realistic production goals" with respect to the application of nutrients in the NMP. This is a vague term that adds no value to the statement. Simplot recommends changing it to the following: "The NMP must address the form, source, amount, timing, and method of application of nutrients on each field, while minimizing nitrogen and phosphorus movement to surface waters."

EPA Response: 40 CFR §412.4(c)(1) states that the NMP must incorporate certain requirements "based on a field-specific assessment.... that addresses the form, source, amount, timing and method of application of nutrients on each field to *achieve realistic production goals*...." 40 CFR § 412.4(c)(1). This is the language that has been incorporated into the permit. No change has been made to the permit as a result of this comment.

Comment JRS #10 (J.R. Simplot Co.)
III.A. There is no timeline requirement for the EPA to review and determine completeness of the NMP in Permit Condition 1. We recommend adding a requirement for EPA to make the determination within 30 days of receipt of the NMP.

EPA Response: See response to comment ICA #2.

Comment JRS #11 (J.R. Simplot Co.)
III.A. The Idaho Animal Waste Management (IDAWM) Software mentioned in Permit Condition 2.a.i. and the Washington NRCS Engineering Technical Note #23 listed in Permit Condition 2.a.ii. appear to be developed for wastewater storage and wet manure. Dry or composted manure are common to all CAFOs. Simplot recommends EPA clarify if dry or composted manure are required to be evaluated using IDAWM Software and Washington NRCS Engineering Technical Note #23. In addition, Simplot recommends EPA clarify if these calculation methods may be utilized for dry or composted manure.

EPA Response: Technical Note #23 and IDAWM apply to manure storage lagoons, not dry or composted manure. See also response to comment ICA #10.

Comment JRS #12 (J.R. Simplot Co.)
III.A. With regards to Permit Condition 2.b., the handling of mortalities does not affect nutrient management and therefore should not be in the NMP. The 2019 NPDES General Permit for CAFOs

in Idaho should not prescribe how mortalities are handled other than they need to be handled so as to not contaminate surface water. If this requirement remains for the NMP, Simplot recommends changing Permit Condition 2.b. to the following: "Mortalities shall be handled in such a way as to prevent the discharge of pollutants to waters of the United States."

EPA Response: See response to comment ICA #11.

Comment JRS #13 (J.R. Simplot Co.)
III.A. Permit Condition 2.c. requires clean water be diverted from the production area or requires the facility provide adequate wastewater or manure storage capacity at the facility to contain clean water. It is difficult and costly to divert run on water from adjacent properties.

As an example, at the Simplot operation near Grand View, Idaho, the topography north and east of the facility consists of steep rising terrain to a desert plain above the Snake River. The land bordering the Simplot operation is owned by the federal government and is managed by the U.S. Bureau of Land Management (BLM). This plain reaches elevations above 2,900 feet and drains to the Snake River valley below through a series of "draws". Building diversion structures to totally divert this water is not appropriate or feasible. In fact, to do so would require a number of such structures to be built on federal lands. If such structures were allowed by rules, such a project would go through a number of regulatory processes such as the National Environmental Policy Act (NEPA). Thus, this would be a very cumbersome process with an uncertain outcome.

It is also not feasible to contain run on water at Simplot's Grand View property due to the enormous volume of run on water from thousands of acres of BLM land up-gradient of the facility. Therefore, Simplot recommends Permit Condition 2.c. be removed from the draft 2019 NPDES General Permit for CAFOs in Idaho.

EPA Response: Clean water diversion measures may or may not be costly, and are generally less expensive than collecting, managing and treating clean water that becomes contaminated. Clean water diversion is a standard and effective management practice with regard to CAFOs. Part III.A.2.c requires clean water be diverted "*as appropriate*". At operations where clean water diversions are not feasible, permittees may document the alternative conservation measures that the permittee has used in the NMP. Therefore, the commenter may opt to treat clean water that becomes contaminated rather than divert clean water away from the production area at the Grand View operation if this is identified as the most feasible alternative. The original language is retained in the Final Permit.

Comment JRS #14 (J.R. Simplot Co.)
III.A. Permit Condition 2.f. requires CAFOs to perform a risk assessment and rate every land application area field for the NMP. The requirement to perform assessments for every field would be overly burdensome in that they would be very expensive and labor intensive. Simplot recommends this Permit Condition 2.f. be removed from the draft 2019 NPDES General Permit for CAFOs in Idaho.

EPA Response: Pursuant to 40 CFR §122.42(e)(5), nutrient management plans must provide field-specific assessments for all fields to which manure is applied. The EPA has opted to utilize the narrative rate approach in this permit in order to simplify nutrient management planning for operators, but as required by the regulation, this does not eliminate the need for field-specific

assessments. No change has been made to the permit as a result of this comment.

Comment JRS #15 (J.R. Simplot Co.)
III.A. For Permit Condition 2.h., it requires "annual nutrient budgets must be generated to determine land application rates for each field where manure, litter, or process wastewater is applied". Most facilities have the data to calculate nutrient budgets, just not a good system to compile all of the data into one report. It would be costly and time consuming to gather the data for annual nutrient budgets. Simplot recommends the requirement for annual nutrient budgets in Permit Condition 2.h. be removed from the draft 2019 NPDES General Permit for CAFOs in Idaho.

EPA Response: The permit, pursuant to 40 CFR § 122.42(e)(5), requires the generation of nutrient budgets. Appropriate application rates cannot be calculated without this information. Neither the regulations nor the permit stipulates a specific format or system in which the information must be compiled, as long as it becomes part of the NMP documentation. No change has been made to the permit as a result of this comment.

Comment JRS #16 (J.R. Simplot Co.)
III.A. Section 5.b. lists four items that EPA considers substantial changes, but does not limit it to only these changes. Simplot recommends defining all changes that are considered to be substantial in the permit rather than leaving it vague, so that compliance can be determined from the face of the permit.

Farmers are continually changing crop rotations, adding new ground, trying different rates and methods of application. A facility's NMP could be under constant EPA review or the facility could easily be out of compliance for adding a new crop or adding new land application ground to his operation prior to obtaining Agency approval. Simplot recommends adding flexibility to the criteria defining a substantial NMP change or allow for expedited Agency review in Section 5.b., to account for these types of changes.

EPA Response: See response to comment ICA #15.

Comment JRS #17 (J.R. Simplot Co.)
IV.A. These permit conditions list recordkeeping requirements for the production area and land application area in paragraph format. Since the recordkeeping requirements are complex with many types of parameters recorded at various frequencies, Simplot recommends the recordkeeping requirements be re-formatted into a table to make them easier to track and maintain compliance (see attached table format as an example from section IV.A. of the 2012 NPDES General Permit for CAFOs in Idaho).

EPA Response: The EPA agrees that there are a number of record-keeping requirements. Rather than presenting them in tabular form instead of list form, the EPA is developing simple electronic reporting forms that CAFO operators may opt to utilize for ease of record-keeping. Those forms are currently under development and should be available early in the permit term.

Comment JRS #19 (J.R. Simplot Co.)
IV.B. Many of the reporting requirements for the Annual Report is currently protected in Idaho and considered confidential business information. Simplot recommends not submitting information to Agencies in an Annual Report, but maintaining the confidential information on site, which Agencies

can review on site.

EPA Response: See response to comment ICA #1.

Comment JRS #20 (J.R. Simplot Co.)
VI. On October 22, 2019, the EPA and Department of the Army published a final rule to repeal the 2015 Clean Water Rule and re-codify it to a pre-existing definition of "waters of the United States". This rule will be effective December 23, 2019. In addition, the EPA and Department of the Army proposed a revised definition of "waters of the United States" on December 11, 2018. Since the definition of "waters of the United States" is in transition, Simplot recommends removing the definition in total and replacing it with a definition to simply reference 40 CFR Part 122.2 (Waters of the United States means waters as defined in 40 CFR Part 122.2).

EPA Response: This change has been made in the Final Permit.

Comment FWW #1 (Food & Water Watch)
The CWA expressly defines CAFOs as "point sources." Congress' decision to include CAFOs in the definition of point source demonstrates an unambiguous intent to control and continuously reduce discharges of pollutants from the CAFO industry through the NPDES program and progressively more demanding TBELs. Yet EPA's regulatory scheme for the industry has allowed most CAFOs nationally – and all CAFOs in Idaho – to evade regulation.

EPA has adopted an overly broad application of the agricultural stormwater exemption found in the Act's definition of "point source." Under this interpretation, EPA considers many discharges of CAFO pollutants from agricultural fields caused by precipitation outside the NPDES permitting regime. The exception has swallowed the rule that CAFO pollution is point source pollution. The result is that the vast majority of water pollution caused by CAFOs is essentially ignored so long as they comply with minimal land application parameters like "agronomic rate" requirements designed not to protect water quality but to maximize crop production. This virtually guarantees there will be unregulated runoff of CAFO pollution to waterways—the very concern that prompted Congress to regulate CAFOs as point sources in the first place. EPA also assumes that CAFO production areas are essentially non-discharging.

Moreover, even where CAFOs are permitted, EPA has not required CAFO permits to contain water quality monitoring requirements as it has done with almost every other industrial category regulated under the CWA. As a result, there is a dearth of data on the actual pollution impacts from CAFOs' routine operations, and even facilities that previously operated under NPDES permits now assert that they do not discharge and are not required to apply for permits. Combined, this framework results in CAFOs being treated as "zero discharge" facilities—a legal fiction even in EPA's estimation. Because of this and EPA's failure to promulgate regulations requiring CAFOs to apply for NPDES permits, none of Idaho's hundreds of CAFOs are currently operating under any CWA permit whatsoever. Slight improvements to permit requirements absent provisions that will lead to permitting in the first place are thus plainly insufficient.

EPA Response: This comment concerns the regulation of CAFOs in general and, as such, are outside the scope of this permit action. This permit implements the CAFO regulations found in 40 CFR § 122.23 and 40 CFR Part 412. No change has been made to the permit as a result of this comment.

Comment FWW #2 (Food & Water Watch)
Idaho is home to a growing CAFO industry. Idaho is now the third largest dairy producing state with approximately 614,000 dairy cows as of January 1, 2019. The State also hosts other types of CAFOs, including one of the largest beef cattle CAFOs in the nation, housing over 150,000 cattle at a time. Many of these livestock are concentrated in approximately 365 large CAFOs. These CAFOs are primarily located in the Magic and Treasure Valleys of southern Idaho, through which many jurisdictional waters flow, including the Snake River. But there are also CAFOs in other regions throughout the State. The excessive concentration of livestock in these regions is having dire impacts on the State's water resources, including surface water quality.

Widespread impairment of Idaho's waterways is well established and is getting worse. Idaho's most recent 303(d) list includes 1,989 miles of streams and 471 acres of lakes contaminated with *E. coli*, 239 miles of streams and 55,509 acres of lakes burdened with excessive nutrients that can lead to conditions fatal for fish and other aquatic species, and 920 miles of streams with unsafe levels of fecal coliform that threaten human health and wildlife. 34,404 miles of rivers and streams and 258,383 acres of lakes are currently not supporting the beneficial uses these waterways would safely support absent pollution. Several Idaho waterways in areas dominated by CAFOs show *E. coli* levels far in excess of the Water Quality Criterion of 126 cfu/100mL geometric mean. Many Idaho waterways passing through CAFO dominated areas also suffer from fecal coliform contamination, nutrient overloads, and oxygen deficiency—likely caused or exacerbated by the discharge of waste from CAFOs.

These impairments to jurisdictional waters are increasing. For example, Idaho waters no longer meeting one or more beneficial use due to *E. coli* contamination have been on the rise since at least 2012. Harmful algal blooms caused at least in part from nutrient loads are also an increasing water quality concern for Idaho. CAFO-generated waste is suspected (and likely) to be a primary culprit behind these increasing impairments, but without permitting and meaningful monitoring there is no way for the public or regulators to know the full extent of the harm.

Yet despite these increasing water quality impairments, EPA's failure to require CAFOs to seek permit coverage – no matter how massive their operation and no matter how extensive their disposal of CAFO waste to Idaho's lands and waters – has resulted in CAFOs operating without any form of NPDES permit. In 2011, over 100 CAFOs in Idaho were operating under an NPDES permit. Today that number is zero. Thus, Idaho's decline in water quality correlates with the complete deregulation of its CAFOs.
CAFOs introduce enormous quantities of waste containing all of these pollutants into Idaho's environment through industry-standard waste management practices. The primary means by which Idaho CAFOs manage and dispose of their animal manure and other waste is by storing it in manure lagoons at production sites and then applying it to nearby agricultural fields (or selling or giving the waste to third parties to apply to their lands at their discretion). Both the storage and disposal of CAFO waste results in discharges of harmful pollutants to waters of the United States, either directly or via groundwater with direct hydrological connection to jurisdictional waters—in fact, the Snake River is a quintessential example of a river fed by groundwater. Manure lagoons are actually designed to leak. And applying CAFO waste to agricultural fields has the potential to discharge pollutants to waterways in several ways: through over-application, runoff in dry weather conditions, tile drainage systems that underlie target fields and channel liquid waste into nearby waters, and drift and runoff from spray irrigation systems used to apply liquid waste, among other pollutant pathways.

Leaching from storage facilities, excessive land application of CAFO waste, and other discharges from production and land application areas is almost certainly causing and contributing to widespread water

quality impairments in Idaho. The State's waterways are under siege from excessive numbers of animals housed on CAFOs and the necessity of disposing of their waste one way or another, year after year. As explained above, hundreds of state- collected water quality samples have discovered impairments from nutrient overloads, fecal coliform, dissolved oxygen, and *E. coli* many times the 126 cfu/100ml water quality criterion. Nutrient pollution is widespread and dozens of streams, as well as large portions of the Snake River, have been under phosphorus total maximum daily loads ("TMDLs") for years now. These water quality problems threaten the environment, wildlife, and human health throughout Idaho.

> **EPA Response:** The EPA acknowledges the statements made by the commenter. Regarding the duty of discharging CAFOs to apply for permit coverage, see response to comment FWW #4.

Comment FWW #3 (Food & Water Watch)
When Congress specifically included CAFOs in the CWA's definition of "point source," it demonstrated an unambiguous intent to control and continuously reduce discharges of pollution from the CAFO industry through the NPDES permitting program. EPA's approach to date has failed, and though the Draft Permit is an improvement to the status quo, it does not comply with the CWA and will not adequately reduce CAFO pollution of Idaho's waterways.

CAFOs are and will continue to operate without the necessary oversight required by the CWA absent strong EPA action to ensure that discharging CAFOs must obtain NPDES permits in the first instance, in addition to more protective permit conditions. Unfortunately, EPA's fundamentally flawed framework for regulating CAFOs has left them profoundly underregulated, with serious and ongoing consequences to water quality across Idaho. With an expanding CAFO industry and increasingly impaired waters, Idaho needs far more protection that the Draft Permit provides. Idaho's CAFOs are not "zero discharge" facilities, and the Draft Permit does not go far enough.

> **EPA Response:** The EPA acknowledges the comment. Much of this comment concerns the regulation of CAFOs in general and, as such, are outside the scope of this permit action. To the extent that this comment mentions the draft permit, the commenter does not point to a specific provision that is at issue or inconsistent with the CWA and/or its implementing regulations.

Comment FWW #4 (Food & Water Watch)
EPA Should Establish a Presumption of Discharge for CAFOs. To regulate all CAFO dischargers and establish an effective duty to apply standard, EPA must make the requisite factual findings to support the inclusion of provisions in its General Permit that create a presumption of discharge for certain CAFOs. Following *National Pork Producers Council*, which eliminated the duty to apply for CAFOs that propose to discharge based on design or operation characteristics, the number of NPDES-permitted CAFOs in Idaho has dropped from over one hundred to *zero*. Yet EPA has estimated that as many as 75% of CAFOs in fact discharge. Idaho CAFOs are no exception, and EPA cannot allow the status quo of nonregulation of jurisdictional discharges and associated water quality impairments to continue across the State.

EPA has already done much of the work to establish the needed presumptions. While some aspects are no longer applicable since *Pork Producers* and EPA's subsequent rule revision, EPA's 2010 CAFOs that Discharge or are Proposing to Discharge guidance ("2010 Guidance") provides a strong starting point to conduct objective assessments of which categories of Idaho CAFOs discharge based on the conditions and practices at the state's CAFOs that can lead to illegal and unpermitted discharges in the state. The 2010 Guidance explains that some conditions that lead to CAFO discharges – including proximity to

waters of the U.S., whether the CAFO is upslope from waters of the U.S., climatic conditions, and drainage of the production area – are "beyond the operator's control," such that EPA can support a factual determination that all Idaho CAFOs with these conditions are dischargers with a duty to apply for the General Permit.

The 2010 Guidance also addresses ventilated livestock confinement buildings as sources of production area discharges of contaminated process wastewater, as these systems can directly discharge pollutants such as manure dust, litter, ammonia, and feathers into nearby waters of the U.S. or conduits to jurisdictional waters, such as production area ditches or channels. While the Guidance limited this discussion to poultry houses, other livestock sectors, including dairies, also emit ammonia and other pollutants via the confinement buildings, whether open air, partially enclosed, or fully enclosed. As discussed below at section III.K, the majority of ventilated or otherwise emitted ammonia will deposit nearby, including in conduits to waters of the U.S. and in waters of the U.S. themselves, where it contributes to nitrogen pollution. Because these systems cause ongoing discharges at many facilities, CAFOs ventilating pollutants from their confinement houses have a duty to apply for an NPDES permit if an objective assessment indicates that this method of operation leads to a discharge of pollutants.

It appears that EPA has not conducted the requisite objective assessments for Idaho CAFOs in the past several years, because the number of permitted operations in the state has dwindled to zero under the agency's watch. Nonetheless, absent appropriate findings that certain CAFOs discharge and a corresponding duty to apply for all discharging CAFOs, the Draft Permit is unlawful. The presumptions of discharge from the production area and duty to apply should likely at a minimum apply to CAFOs located directly upslope from, land applying upslope from, or otherwise located or land applying in close proximity to a water of the U.S. or conduit to water of the U.S.; CAFOs located in a floodplain; and CAFOs discharging via water-polluting emissions and ventilation systems.

> **EPA Response:** Pursuant to the decision cited by the commenter (*National Pork Producers Council, et al v United States Environmental Protection Agency*, United States Court of Appeals for the Fifth Circuit, March 29, 2011), the EPA does not have the authority to establish a presumption of a discharge in the permit. However, also pursuant to that decision, if a CAFO is discharging, they have a duty to apply under the CWA. Consistent with the CWA, its implementing regulations and case law, this permit requires all discharging CAFOs to apply for permit coverage. Pursuant to 40 CFR §122.23(f), a CAFO must be covered by a permit at the time that it discharges.

Comment FWW #5 (Food & Water Watch)

The Final Permit Should Require Individual NPDES Permits for Very Large CAFOs and CAFOs Located in Already Impaired Watersheds. As a threshold matter, EPA should consider two additional criteria requiring an individual NPDES permit in addition to those outlined at Section I.F of the Draft Permit. First, EPA should consider a numerical animal unit cap for coverage under this General Permit. Very large facilities should not be assumed to have the same water pollution potential as all other, smaller facilities, and EPA should not assume that the same TBELs will adequately protect water quality from large CAFOs of every scale. EPA has itself recognized that general permit conditions may be too generalized to address the unique potential for discharges at extremely large CAFOs, and the Final Permit should reflect that fact.

> **EPA Response:** The CAFO regulations already take the size of a CAFO into consideration, thus, the general permit does not need to include a cap on eligibility. If the commenters believe that a

facility is more appropriately covered under an individual permit, then the commenter can petition the EPA to do so [*see* 40 CFR §122.28(b)(3)].

Comment FWW #6 (Food & Water Watch)
Second, given Idaho's existing significant water impairments in regions dominated by CAFOs and irrigated agriculture used to dispose of CAFO waste, CAFOs located in or land applying waste in already impaired watersheds should be required to obtain individual NPDES permits. This would allow EPA and state regulators to more effectively analyze the CAFO's likely impact on the impaired waterway and determine the WQBELs and wasteload allocations necessary to attain WQS and implement TMDLs. Assuming that compliance with a general permit—which is by nature generalized and not capable of ensuring those protections uniquely necessary for certain impaired waterways—will stop ongoing impairment, and even improve water quality, is incorrect and not supported by a history of water quality problems in Idaho. Individual NPDES permit coverage would be far more effective at meeting the goal of the CWA and bringing CAFO pollution under control.

For example, significant portions of the Snake River watershed are under TMDLs for pathogens and phosphorus, and recent data show levels of nitrate contamination in the hydrologically connected groundwater in the same area are likely to keep rising for 40-50 years even if nitrogen inputs are held constant. This same area is heavily populated by CAFOs.

EPA Response: During the permit development process, the EPA reviewed all nutrient and bacteria TMDLs for the State of Idaho. There are no TMDL wasteload allocations (WLAs) assigned to any CAFO in the State of Idaho. Pursuant to 40 CFR §122.44(d)(1)(vii)(B), permit conditions must be consistent with the assumptions and requirements of any available WLA. Relevant Idaho TMDL documents that have identified agricultural sources of pollutants have not assigned WLAs to CAFO operations, but rather have identified the implementation of BMPs via technical assistance approaches. It is the best professional judgement of the permit writer that the implementation of these same BMPs via the conditions specified in a general permit are appropriate and adequate to control pollutants in impaired watersheds when a general class of operations, i.e., agriculture, has been identified as a source, but no specific operation nor classes of operations have been assigned WLAs. The EPA also notes that Idaho's draft Water Quality 401 Certification (August 30, 2019) certifies that the conditions of the general permit "comply with Idaho's Water Quality Standards, including any applicable water quality management plans (e.g., total maximum daily loads)."

Comment FWW #7 (Food & Water Watch)
The Final Permit Must Require Effluent Monitoring. The CWA requires that NPDES permits contain conditions, including data collection and reporting, to "assure compliance" with the Act. Furthermore, Section 308 of the Act states that "[w]henever [it is] required to carry out the objective" of the CWA, "(A) the [EPA's] Administrator shall require the owner or operator of any point source to … (iii) install, use, and maintain such monitoring equipment or methods … and (v) provide such other information as he may reasonably require."

EPA's accompanying CWA regulations require all NPDES permits to include certain monitoring and reporting requirements designed to "assure compliance with permit limitations." These regulations include, among other provisions, "requirements to monitor: (i) The mass (or other measurement specified in the permit) for each pollutant limited in the permit; (ii) The volume of effluent discharged from each outfall; [and] (iii) Other measurements as appropriate…." Permit monitoring provisions must

further specify the "type, intervals, and frequency [of sampling] sufficient to yield data which are representative of the monitored activity, including, when appropriate, continuous monitoring." Permittees must report monitoring results "with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year." Given these statutory and regulatory requirements, "[g]enerally, 'an NPDES permit is unlawful if a permittee is not required to effectively monitor its permit compliance.'"

EPA must include monitoring requirements that allow for meaningful oversight of Idaho CAFOs' compliance with the Draft Permit's conditions and effluent limitations. This requires representative water quality monitoring at CAFO production sites as well as land application sites adequate to provide oversight of permit compliance. While the Draft Permit prohibits discharges from CAFO production areas except under limited circumstances and requires CAFOs to develop and implement Nutrient Management Plans ("NMP") for the handling, storing, and land application of their waste, the Draft Permit does not include monitoring requirements that would enable EPA, Idaho officials, or the public to ensure their operations are in compliance with these no discharge parameters and effluent limitations. As explained by the Second Circuit, "NPDES permits must contain conditions that require both *monitoring* and *reporting of monitoring results* of TBELs and WQBELs to ensure compliance." The Draft Permit's failure to require such monitoring plainly violates the CWA and leaves regulators and the public to guess whether and how CAFOs are violating the law.

The sampling and monitoring requirements the Draft Permit does contain are insufficient to satisfy the CWA or EPA regulations. The soil and manure sampling requirements included in the Draft Permit look at the nitrogen and phosphorus content of CAFO waste and target fields, helping calculate agronomic rates of application, but have nothing to do with whether discharges are occurring that impact jurisdictional waters. Nothing about this sampling tells whether waste was actually applied appropriately and in accordance with a CAFO's NMP. And the requirement to monitor manure spills and other obvious, discrete discharges from wastewater or manure storage structures also does not suffice because it takes place after a known violation, rather than being representative and serving to assure compliance.

EPA must determine what monitoring is representative for a particular CAFO applicant. It will likely include monitoring surface water and/or groundwater where a direct hydrological connection exists between groundwater and jurisdictional waters, monitoring discharge points from production areas, such as ditches that may carry contaminated wastewater off-site and into waterways. Representative monitoring must also include monitoring requirements for tile drain outfalls at fields where CAFO waste is land applied, where such systems are in place. Tile drain systems are conduits underlying agricultural fields designed to shed excess moisture, and where liquid manure is applied can directly discharge pollutants to surface waters or conduits to surface waters. This is necessary to monitor compliance with the Draft Permit's "no dry weather discharge" provision.

Until EPA requires representative effluent monitoring where appropriate to document discharges from CAFO production and land application areas, many of the terms and conditions of the Draft Permit will remain mere words on paper. EPA may not excuse CAFOs from the monitoring required of all NPDES permittees simply because it has created a legal fiction that these operations do not discharge. But even if that were the case, zero is an effluent limit, and the CWA requires CAFOs to demonstrate their compliance with it.

EPA Response: See response to comment ICL #2.

Comment FWW #8 (Food & Water Watch)
The Final Permit Must Require BPJ Limits for CAFO Pollutants with No ELG. EPA essentially treats CAFO waste as only containing nutrients that are beneficial to crop production if applied at agronomic rates. Under this approach, any other pollutants of concern that may be found in CAFO waste, but that are not beneficial to or utilized by crops, are not considered or regulated under the NPDES program. Yet CAFO waste contains a variety of other pollutants including solids (feed, hair, feathers, etc.); salts; trace elements such as arsenic, copper, selenium, zinc, cadmium, molybdenum, nickel, lead, iron, manganese, aluminum, and pesticide ingredients; pathogens (bacteria, viruses, protozoa, fungi, prions, and helminths); antimicrobials (antibiotics and vaccines); hormones (both natural and synthetic); pesticides; soaps; and disinfectants.

Regarding pollutants for which no ELG has been established, EPA regulations require case-by-case effluent limitations based on Best Professional Judgment ("BPJ"). BPJ effluent limitations can take the form of numerical limitations or BMPs. Recent EPA guidance further clarifies that permitting agencies must establish BPJ limits for pollutant discharges not covered by the applicable ELGs:

> Where EPA has not promulgated technology-based effluent guidelines for a particular class or category of industrial discharger, *or where the technology- based effluent guidelines do not address all waste streams or pollutants discharged by the industrial discharger*, EPA must establish technology-based effluent limitations on a case-by-case basis in individual NPDES permits, based on its best professional judgment or "BPJ."
> . . .
>
> *[A]n authorized state must include technology-based effluent limitations in its permits for pollutants not addressed by the effluent guidelines for that industry*. 33 USC § 1314(b); 40 CFR § 122.44(a)(1), 123.25, 125.3. In the absence of an effluent guideline for those pollutants, the CWA requires permitting authorities to conduct the "BPJ" analysis discussed above on a case-by-case basis for those pollutants in each permit.

CAFOs are capable of discharging a variety of pollutants with no established ELGs, as explained further in sections E and K. This includes CAFO waste handled at production areas and land applied to fields, as well as discharges of pollutants from CAFO ventilation systems. Many pollutants found in CAFO waste applied to agricultural fields are not subject to agronomic rate considerations because they are not nutrients available for use by crops. Instead, they must be treated as what they are: pollutants that CAFOs produce, handle, and dispose of in ways that potentially result in discharges to jurisdictional waters. These pollutants and those discharged by ventilation systems do not have ELGs and thus require EPA to develop BPJ limitations sufficient to protect against unpermitted discharges to jurisdictional waters.

> **EPA Response:** The Final Permit includes provisions designed to address additional pollutants, e.g., mortality management (Part III.A.2.b), chemical and other contaminant management (Part III.A.2.e) as well as all sources in the production area (see response to comment FWW #16). These requirements are designed to minimize additional pollutants in any waste stream or discharge. The pollutant management approach for CAFOs uses nutrients as the measurable metric. However, it does not ignore other possible pollutants, such as those mentioned by the commenter. Pollutants at CAFOs are comingled in waste streams, storage structures, mortality management systems, etc. Therefore, by managing those collective systems and waste streams,

all pollutants are managed.

Comment FWW #9 (Food & Water Watch)
The Draft Permit Requires Inadequate Sampling of Soils and CAFO Waste. FWW supports EPA's requirement of annual soil tests for land application sites in the Draft Permit, which is more protective than its ELG requirement of a phosphorus soil test only every five years. However, a timeframe for when sampling must occur and clear requirements for representative sampling would be an appropriate additional safeguard. It is critical that current and actual soil conditions are understood before CAFO waste is applied to agricultural fields. As the University of Idaho Bulletin # 704 regarding soil sampling states, "soil sampling is also one of the most important steps in a sound crop fertilization program." CAFOs "should take soil samples as close as possible[,]" ideally "2 to 4 weeks before . . . fertilizing the crop." Because the University of Idaho Bulletin # 704 does not mandate this common sense practice, FWW asks that EPA establish a clear period of time prior to waste application in which CAFOs must conduct this sampling to avoid early sampling that does not capture actual and current soil conditions. For example, if soil samples are taken early in the year, potentially many months before land applications will occur, actual soil conditions may no longer be understood and CAFO waste may be overapplied. A variety of factors could make dated soil samples inappropriate tools for ensuring agronomic rate applications including other nutrient applications, drift from nutrient applications to nearby fields, or re-deposition of nitrogen lost to the atmosphere from CAFO waste from volatilization during storage and handling.

The Draft Permit should also make clear that soil samples must be representative of actual conditions on the target field. As University of Idaho Bulletin # 704 notes, "[a]n absolute minimum of 10 subsamples from each sampling unit" should be taken, especially for irregular fields, as this is "necessary to obtain an acceptable [overall] sample." Since the Bulletin is merely suggestive, EPA should include a clear and mandatory permit condition along these lines.

Similarly, FWW supports at least annual manure sampling as outlined in the Draft Permit, but EPA should establish more stringent requirements. First, EPA should make clear in the Final Permit that such manure samples must be representative of the material that will be applied by the CAFO. University of Idaho Manure and Wastewater Sampling CIS 1139 notes that "proper sampling is the key to reliable manure analysis," but only suggests the need for multiple and representative samples. Requiring "compliance" with such open-ended and non- mandatory technical standards is inadequate; EPA must go farther and require multiple, representative samples in such a way as to ensure accurate understanding of what the CAFO is spreading onto fields.

And as with soil sampling, EPA should mandate that manure sampling be conducted shortly before land application. The Draft Permit gives passing reference to University of Idaho Manure and Wastewater Sampling CIS 1139, but does not mandate anything from the guidance and fails to mention anything regarding when samples must be taken. CIS 1139 suggests that CAFOs conduct manure sampling "as close to the date of application as practical…or within 30 days" at the earliest. EPA should clearly incorporate and mandate this standard. If manure is land applied at different times throughout the year, the Draft Permit should require sampling shortly prior to each and every period of application.

> **EPA Response:** While customizing sampling can sometimes improve data quality, monitoring requirements in permits must also consider data interpretability for the intended purpose. As the commenter notes, annual soil testing provides notable improvements in interpretability for the purposes of estimating appropriate nutrient application rates. While the EPA supports the

recommendation of soil sampling within 2-4 weeks of land application whenever possible, the logistical issues (lab capacity and turn-around times, for example) may make this infeasible. For purposes of land application of manure, annual sampling is necessary and appropriate, and the current requirements optimize data quality and implementability. No change has been made to the permit as a result of this comment.

Comment FWW #10 (Food & Water Watch)
Additionally, EPA should expand the pollutants for which CAFOs must conduct sampling. The Draft Permit requires that manure only be sampled for nitrogen and phosphorous. But, as explained above, CAFO waste is known to contain an array of other pollutants of concern. EPA should require CAFO waste that will be applied to fields be analyzed for all of the constituent pollutants that EPA has already found it likely to contain, and these sampling requirements should correspond to the pollutants for which EPA determines it must establish BPJ effluent limits. If laboratory analysis determines that other pollutants of concern are present in the samples, appropriate restrictions on land application practices must be in place to ensure harmful constituents are not disposed of on agricultural fields in such a way that will likely lead to a discharge to surface waters.

EPA Response: See response to comment FWW #8. In the absence of evidence of actual human health or environmental concerns associated with additional pollutants, e.g., CWA 303(d) verified impairments, broader manure sampling and analysis requirements that would apply to all facilities with coverage under a general permit is not currently warranted.

Comment FWW #11 (Food & Water Watch)
The Final Permit Should Contain Stronger Waste Storage Requirements. Appropriate waste storage structures are an integral part of ensuring CAFOs do not discharge pollutants in violation of permit conditions. EPA should include two additional permit conditions and revise one provision pertaining to waste storage structures.

First, EPA should include phase-out requirements for old manure lagoons and other storage facilities that no longer meet the most current EPA and NRCS standards. Antiquated storage facilities pose an unacceptable threat, and should not be allowed to simply continue operating until they fail. As noted above, the regions of Idaho most populated with CAFOs overlie highly fractured basalt geology that allows nutrients to infiltrate groundwater, which is well-documented to have direct hydrological connection to jurisdictional waters.

Second, EPA should develop its own standards for the technical specifications of waste storage facilities. The Draft Permit relies on NRCS standards, which have proven insufficient after years of water quality impairments across the United States. In fact, NRCS standards expressly allow for leaks of pollutants, which can result in discharges of pollutants to jurisdictional waters. Specifically, EPA should require that all waste impoundment structures that are not virtually impermeable (such as concrete manure storage facilities) phase in synthetic liners with leak monitoring systems as soon as practicable. Synthetic liners with leak detection systems are in use at some CAFOs already, and are the appropriate BAT standard that Idaho CAFOs should be held to.

Finally, EPA should revise the Draft Permit Section III.A.2.a.i to eliminate the ability of a CAFO to seek coverage under this permit without having in place sufficient waste storage capacity. As written, the Draft Permit appears to enable a CAFO to begin or continue housing animals even if its waste storage capacity evaluation determines the facility has “less than the minimum capacity requirements specified

in Section II.A.1." This does not make sense and could easily lead to CAFOs operating without needed capacity when the time comes—instead, every CAFO must have adequate waste storage capacity *before* its Notice of Intent is approved.

> **EPA Response:** The waste storage standards and specifications apply to all existing and planned manure, litter and wastewater storage structures. The permit includes a specific requirement that the storage capacity of all storage structures must be evaluated and that operators of any structures found to be deficient must provide corrective and interim measures, as well as schedules for correcting any deficiencies. See Part III.A.2.a.i of the Final Permit. While the EPA is not requiring the use of synthetic liners with leak monitoring systems in the permit, the EPA is requiring permittees to have a liner that is constructed and maintained in accordance with Idaho NRCS standards. NRCS practice standards do include considerations for categories where synthetic liners should be used in conjunction with clay liners. If the commenter believes that different regulations are warranted, the commenter can petition the EPA for rulemaking for to develop its own standards and technical specifications for manure, litter, and wastewater storage structures. No change has been made to the permit as a result of this comment.

Comment FWW #12 (Food & Water Watch)

EPA Should Establish Additional Requirements for Transfers of CAFO Waste to Third Parties. As written, the Draft Permit's safeguards for avoiding discharges of pollutants to jurisdictional waterways via land application only apply to "land under the control of the CAFO owner/operator," and the requirements for when a CAFO instead transfers its waste are extremely sparse. EPA must include additional safeguards for when CAFO owners/operators transfer CAFO waste by sale or gift to third parties. This is a necessary and appropriate addition because as NPDES-permitted industrial facilities, CAFO waste management practices of all kinds are central to attaining the goal of the CWA. Absent greater protections, CAFOs have an incentive to transfer their waste to third parties without conducting any due diligence as to the likely impacts on water quality; third party land application brings all the same risks of water quality impairments attendant to a CAFO's own land application. When a CAFO generates waste, which has a high potential to pollute jurisdictional waters, it should be required to responsibly deal with that waste, even when doing so means transferring it to a third party.

In addition to the conditions outlined at III.D of the Draft Permit, CAFO owners/operators should be required to do the following before being permitted to transfer waste to a third party: communicate to any recipient all land application guidelines and best management practices that would apply were the CAFO land applying the waste to lands under its control, inquire as to whether the third party intends to responsibly handle and utilize the waste and receive an affirmative response, inquire where and in what quantities the recipient intends to land apply any of the transferred waste, and record and report the preceding items to EPA and Idaho officials. CAFO owners/operators should retain some degree of responsibility for how and to whom they transfer their waste, lest this loophole become a go-to avenue for disposing of a CAFO's waste irresponsibly. These measures are necessary to safeguard against CAFOs transferring waste to another person who is incapable of responsibly handling such wastes and from CAFO owners/operators using third parties to do what they themselves are prohibited from doing under the terms of their NMP and this General Permit.

> **EPA Response:** The proposed permit is consistent with 40 CFR §§122.42(e)(3) and 122.42 (e)(4). 40 CFR §122.42(e)(3) states that prior to transferring manure, litter or process wastewater to a third party, CAFOs must provide the recipient with the most current nutrient analysis. In addition, the permitted CAFO must retain such records for five years. 40 CFR

§122.42(e)(4) requires the annual report to include an estimate of the amount of total manure, litter or process wastewater transferred to other persons in the past 12 months. If a third party meets the regulatory definition of a CAFO and discharges manure, litter, or process wastewater to waters of the United States, the owner/operator or third party in control of that CAFO must apply for the permit. In addition, Section 301(a) of the CWA prohibits the discharge of pollutants to waters of the U.S. except in accordance with an NPDES permit. If that third party meets the definition of a point source as defined in 40 CFR §122.2 and discharges pollutants to waters of the U.S. without an NPDES permit, that third party may be subject to enforcement for an unauthorized discharge.

Comment FWW #13 (Food & Water Watch)

Land Application of Waste from Anerobic Digesters. An increasing number of CAFOs in Idaho are using or are considering using anaerobic digesters to capture methane from animal waste generated at CAFOs. EPA may not ignore the use of digestate—the leftover solid and liquid waste after methane capture—as a fertilizer for land applications. Digestate poses heightened risks to water quality, and merely spreading this digestate on fields as though it were no different than undigested CAFO waste is not BAT, in violation of the CWA and EPA's regulations. NRCS warns that nitrogen, phosphorus, and other elements in digestate are more water soluble than in undigested CAFO waste, making it more prone to leaching and runoff and posing a unique risk to surface water. Until EPA conducts a thorough assessment of the water pollution implications of land applying digestate, and how this affects agronomic rates, the Draft Permit should prohibit the use of liquid or solid digestate in land application practices.

EPA Response: The application of nutrients in any form, including digestate, must be accounted for in the nutrient management plan. See Part II.B.2 of the Final Permit. No change has been made to the permit as a result of this comment.

Comment FWW #14 (Food & Water Watch)

The Final Permit Must Prohibit Spray Irrigation. The Draft Permit should expressly prohibit spray irrigation of manure given the unique risks associate with this practice. Using spray irrigation threatens surface waters because this practice can result in excessive application that causes waste ponding, leaching, and potential dry weather runoff. Spray irrigation also has the potential to cause drift to surface waters nearby target fields. These irrigation systems are also reliant on pipes and hoses to connect lagoons with sprayfields, which can leak or break, resulting in unpermitted discharges.

Spray irrigation also results in higher rates of evaporation and volatilization of a range of CAFO pollutants. Several studies have found that when manure is not incorporated into soil after application, more than half of the manure ammonia is lost, likely due to volatilization. This directly impacts surface waters because volatilized ammonia will re-deposit into waterways.

EPA Response: Please see the Idaho Nutrient Transport Risk Assessment (INTRA) method (Appendix E of the Final Permit), which directly incorporates an irrigation index into the risk assessment. This ensures that if spray irrigation is used, it is adequately accounted for. No change has been made to the permit as a result of this comment.

Comment FWW #15 (Food & Water Watch)

EPA Must Prohibit Land Applications When Current or Impending Rainfall Is Capable of Producing Unauthorized Discharge. The Draft Permit does not appear to include a condition requiring, or even

suggesting, CAFOs delay land applications of waste if current or impending precipitation capable of producing an unauthorized discharge is forecasted. This is a typical requirement in other CAFO NPDES permits, and one EPA strongly encourages delegated states to implement; EPA should clearly require it in this permit as well. Even the currently operative CAFO general permit from 2012 contains this consideration by incorporating NRCS Conservation Practice 590. As a result, if the Final Permit does not include this prohibition and lacks a considered justification and finding of necessity, it would violate the CWA's express anti-backsliding prohibition.

When the National Weather Service forecasts rainfall exceeding one-half inch, or less if a lesser rainfall event is capable of producing unauthorized discharge, during the planned time of application or within 24 hours after the planned time of application, CAFOs must delay land application because rainfall onto freshly applied waste is likely to result in discharges. Such a requirement follows logically from the restrictions already deemed essential in the Draft Permit, namely the prohibition on applying to saturated ground. There is no reason to only prohibit applying waste when rain has already saturated ground, but not when rainfall is actively or imminently going to produce similar conditions that make unauthorized discharges likely.

> **EPA Response:** The EPA concurs with the comment. Avoiding land application during precipitation or snowmelt events or when conditions that could generate discharges are expected, is an inherent aspect of application timing. However, none of the appended technical tools specifically articulates this element. Therefore, Part II.B.10.b of the Final Permit has been modified as follows to provide clarity on the prohibition on land application of manure, litter and process wastewater: *When the top two inches of soil are saturated from rainfall, snow melt, irrigation, or when current or predicted weather is capable of producing such conditions.*

Comment FWW #16 (Food & Water Watch)
Discharges from Ventilation Systems. The Final Permit should also make clear that discharges from CAFO ventilation systems are point source discharges covered by the CWA, and establish permit conditions necessary to protect waterways from this pollution. The term "pollutant" is defined very broadly in the CWA, and EPA's position is that CAFO ventilation fans are capable of discharges covered by the CWA. These ventilation systems are used by various types of facilities, and can directly discharge pollutants such as manure, dust, litter, ammonia, and animal debris (feathers, hair, etc.) into nearby jurisdictional waters or conduits to jurisdictional waters, such as production area ditches or channels.

EPA must include BPJ conditions in the Permit regarding the use of ventilation systems. As EPA has stated, "there are other circumstances where a permit writer must use BPJ or special permit conditions to address specific discharges at CAFOs that are not included in the ELG. For example, the CAFO ELG does not address … pollutants (such as manure, feathers, and feed) that have fallen to the ground immediately downward from confinement building exhaust ducts and ventilation fans …."

> **EPA Response:** The permit is clear that any discharge of manure, litter or process wastewater from the production area is prohibited except for the circumstances of discharges occurring when specific 25-year 24-hour storm design standards have been implemented and maintained (Part II.A.1). There are no exceptions to this discharge prohibition. The permittee is required to develop a nutrient management plan that addresses all site-specific conditions to comply with this requirement (Part III.A.2). This necessarily includes all sources and transport mechanisms of manure, litter and process wastewater, even though the permit does not provide an exhaustive list.

Comment FWW #17 (Food & Water Watch)
Reassess 25-year, 24-hour Storm Event Standards. EPA should require Idaho CAFOs to plan for the extreme precipitation events made increasingly more common by climate change. Extreme precipitation events are likely to cause overflows of stored waste at CAFO production areas designed to specifications based on outdated historical precipitation patterns. The consequences of storage lagoon overflows are dire, as shown by recent events elsewhere in the nation. The Draft Permit does not specifically define this standard, but a CAFO operator could reasonably look to EPA's regulatory definition for guidance to determine the nature of a "25-year, 24-hour storm event" for their operation. Unfortunately, EPA anchors its regulatory definition to nearly 60-year-old NRCS data. Given that dated and no longer applicable set of metrics, EPA should establish a more protective and accurate standard based on the most current data that ensures CAFOs' waste impoundments are capable of accommodating today's more extreme 25-year, 24-hour storms. EPA has asked other state authorities to do just this. If EPA does not require Idaho CAFOs to prepare for current conditions, facilities will be able to avail themselves of a permit shield for overflows and other discharges resulting from storms that are no longer 25-year, 24-hour events, but rather are the new normal.

> **EPA Response:** Changing either the regulatory threshold, i.e., the 25-year, 24-hour storm, as stipulated in 40 CFR Part 412 or NOAA's published rainfall precipitation frequency and duration estimates are outside the scope of this permitting action. No change has been made to the permit as a result of this comment.

Comment FWW #18 (Food & Water Watch)
CAFOs in Idaho are having serious impacts on the State's jurisdictional waters, and EPA needs to bring these facilities' pollution under control to protect and improve water quality as required by the CWA. Commenters appreciate the steps forward EPA has included in the Draft Permit, but respectfully request that it strengthen the Permit with the above conditions and requirements that are necessary to protect water quality in Idaho from an out-of-control CAFO industry. And to give the Permit effect and make these improvements lead to actual improvements in water quality, EPA must establish a presumption of discharge for certain CAFOs that requires them to obtain NPDES permit coverage. Please contact us with any questions you may have regarding any of the above comments and why the proposed revisions are necessary in Idaho. Thank you for your attention and consideration.

> **EPA Response:** The EPA acknowledges the comment and has addressed the specifics summarized in this paragraph in prior responses.

Comment IDOA #1 (In Defense of Animals)
As one of 250,000 supporters of the California-based international animal protection nonprofit organization In Defense of Animals, I respectfully urge the EPA's Region 10 Office to NOT reissue the National Pollutant Discharge Elimination System General Permit for Idaho's Concentrated Animal Feeding Operations (CAFOs). CAFOs perpetrate severe animal cruelty, are inherently unsustainable, and cause significant environmental damage. The EPA is charged with safeguarding human health and the environment, and therefore should not give corporations permission to invade rural communities and damage their residents' health.

CAFOs produce large quantities of waste and manure, which is dumped in lagoons or large fields. During downpours, the waste can overflow causing runoff to end up in rural communities' water supplies. Waste also seeps into underground aquifers containing groundwater.

Additionally, CAFOs are a significant source of air pollution.

According to the National Association of Local Boards of Health, CAFOs create a stench which forces neighbors to stay indoors and emit toxic fumes which cause neurological and respiratory disorders. The fumes produced in CAFOs are deliberately blown outside with fans since they are toxic to the workers and animals inside them.

These disastrous problems are inherent to CAFOs. Although some steps can be taken to lessen the environmental destruction they cause, CAFOs, by nature, will always lead to significant harm and suffering. The EPA should use its authority to protect the health of rural communities, animals bred for slaughter, and wild animals who are adversely affected by CAFOs, instead of the profits of powerful corporations.

I am sincerely hoping that logic and compassion will replace greed and denial on this most critical of issues.

> **EPA Response:** Many of the water quality impacts from CAFOs are the reason why the CWA regulates these facilities under the NPDES permit program. The permit places enforceable requirements on permittees to implement pollution controls. No change has been made to the permit as a result of this comment.