

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

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

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. § 1251, et. seq.; the "Act"), authorization is given to:

**K-4 Cattle, LLC
1213 J Avenue
Pender, NE 68047**

to discharge from a Concentrated Animal Feeding Operation (CAFO) located at:

S½ SW¼ Section 12, Township 25 N, Range 5 E
Latitude: 42.148439° N / Longitude: -96.800764° W
Thurston County, Nebraska

Standard Industrial Code (SIC2) = 0211

to receiving waters named: Unnamed tributary to Rattlesnake Creek (NDEE Segment EL2-20400) then to Logan Creek (NDEE Segment EL2-20000) only if the CAFO is operated in accordance with the effluent limitations, best management practices, and other requirements and conditions set forth herein. Authorization for discharge is limited to when precipitation in excess of a 25-year, 24-hour rain event causes an overflow from a properly designed, constructed, operated, and maintained runoff control system consistent with the requirements of this permit.

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Signed this _____ day of _____, 2020.

Jeffery Robichaud
Director, Water Division

PART I. EFFLUENT LIMITATIONS AND STANDARDS

A. Facility Description

K-4 Cattle, LLC is a Concentrated Animal Feeding Operation (CAFO) with approximately **39.4** acres of open lot pens that are used for the feeding of up to **4,500** head of beef cattle. Runoff from the open lot pens and approximately **4.4** acres of other contributing drainage area is directed to the runoff holding pond. The runoff holding pond has a capacity of approximately **35.8 acre feet or 11,650,779 gallons**. Solid manure scrapped from the pens, solids removed from the debris basins, and the contents of the holding pond are to be applied to the land application areas in accordance with the CAFO's Nutrient Management Plan ("NMP"). K-4 Cattle, LLC has **2,563 acres** available for manure application, but may also transfer manure to other recipients in any given year.

B. Effluent Limitations and Standards

1. Technology-based Effluent Limitations and Standards - Production Area

There must be no discharge of manure, litter, or process wastewater pollutants into waters of the United States from the production area except as provided in paragraphs 1(a) (i) and (ii) of this section.

(a) **Overflow Discharge** - 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:

- (i) The production area is properly designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the 25-year, 24-hour rainfall event for the location of the CAFO; and
- (ii) The production area is being operated in accordance with the applicable terms and conditions of this permit.

2. Holding Pond Capacity and Operation

The Permittee shall, at a minimum, provide adequate storage of all manure, litter, and process wastewater, including runoff that has come into contact with animal waste, for a period of no less than the maximum length of time between land applications or offsite transfers of the manure, litter, or process wastewater.

Table 1 – Operating Level Requirements*

Wastewater Retention Structure	Must Pump Level*	Winter Pump Down Level*
Holding Pond 1	17.5 feet	13.0 feet

* Refer to the figure on pages 3-11 of the approved NMP. The must pump level and start pump level listed in NMP are the same for Holding Pond 1. The must pump level and winter pump down level are shown in vertical feet from the bottom of the holding pond.

Capacity of the pumping system shall be adequate to land apply the runoff from the 25-year, 24-hour precipitation event over a period not to exceed 14 days. The holding pond shall be dewatered prior to the

winter months to provide the capacity indicated by the "Winter Pump Down" level.

For each day when the water level in the holding pond is above the "Must Pump" operating level, the Permittee shall maintain documentation of 1) land application procedures and information as required in this permit, or 2) the soil and/or weather conditions that made that particular day unsuitable as a dewatering day (see permit definitions).

3. Solid Wastes

Sludge or solids shall be removed from the retention structure(s) whenever the sludge accumulation exceeds the required operating level specified in Table 1. The Permittee shall not stockpile livestock waste in a location where it is likely to impact waters of the United States. Stockpiles shall be managed as necessary by use of cover material, diking, or other means to prevent a discharge until the stockpile material is utilized.

Sludge or solids shall not be allowed to accumulate such that it cannot be disposed of agronomically as provided in the NMP.

4. Markers and Measurements

Daily precipitation shall be recorded from a rain gauge that is kept on site and properly maintained.

Maintenance of a permanent marker (staff gauge or marking device) is required to measure the liquid and sludge depths in increments of one foot. Permanent markers must be made of durable material and must be permanently fixed and reference a permanently fixed benchmark or fixed elevation reference point adjacent to, and outside of, the waste containment area.

5. Additional Measures and Records for Production Area

The Permittee must implement the following additional measures.

(a) Visual Inspections

- (i) Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to debris basins and holding ponds;
- (ii) Daily inspections of all water lines, including drinking water or cooling water lines; and
- (iii) Weekly inspections of the holding pond(s). Such inspections shall include noting the level as indicated by a depth marker installed in the impoundment. Each depth marker must clearly indicate the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event for the location of the CAFO.

(b) **Corrective Actions** - Any deficiencies that are identified in the above daily and weekly visual inspections must be corrected as soon as possible. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction.

(c) **Mortality Handling** - The primary method of carcass disposal is rendering and the secondary is burial. Disposal of animal mortalities in any liquid manure or process wastewater systems is prohibited. Handle animal mortalities so as to prevent discharge of pollutants to surface water.

- (d) **Record Keeping for Production Area** – The Permittee must maintain for a period of five years from the date they are created, complete on-site records of:
- (i) implementation of all required additional measures for the production area included in this section [Part I. B. 5. (a), (b), and (c)] of this permit;
 - (ii) the as-built design and drawings of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity; and
 - (iii) the date, time, and estimated volume of any overflow.

6. Technology-based Effluent Limitations and Standards - Land Application Areas Under the Control of the CAFO Owner/Operator

The Permittee shall follow the approved site-specific NMP, the terms of which are incorporated as a part of this permit for land under the control of the NPDES Permittee. Land under the control includes:

- (a) Owned areas;
- (b) Rented or leased areas including land rented or leased solely for land application area; and
- (c) Any area where the NPDES Permittee stockpiles, spreads, or delivers waste to, or otherwise controls the timing, amount, or rate of land application.

7. Water Quality-based Effluent Limitations and Standards - Production Area

Discharges to Water Quality Impaired Waters.

If the CAFO discharges to an impaired water within the reservation boundary with/or without an EPA approved Total Maximum Daily Load (TMDL), EPA will inform the facility if any additional limits or controls are necessary for the discharge to be consistent with water quality standards or the assumptions of any available wasteload allocation in the TMDL. Any additional limits or controls shall be included in the NMP.

8. The Terms of the NMP

- (a) The Permittee must do the following to meet the 9 minimum site-specific enforceable terms of the NMP. The NMP will be effective for the duration of the permit, unless changed in accordance with subparagraph 9 and EPA's approval.
 - (i) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
 - (ii) Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
 - (iii) Ensure that clean water is diverted, as appropriate, from the production area;
 - (iv) Prevent the direct contact of confined animals with waters of the United States;
 - (v) 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;

- (vi) Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States (setback distances as specified in this permit; setbacks shown on specific land application maps in the NMP appendix);
 - (vii) Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
 - (viii) Establish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater (under Additional Terms of the NMP in Part I, B. 8. b); and
 - (ix) Identify specific records that will be maintained.
- (b) Additional Terms of the Nutrient Management Plan for Land Application (Narrative Approach):
- (i) List of the fields and acres available for land application (land application maps with setbacks are included in the NMP);
 - (ii) Timing limitations (none applicable);
 - (iii) The outcome of the field-specific assessment of the potential for phosphorus transport from each field. Referred to as the P-Index (as specified in the NMP);
 - (iv) The crops to be planted in each field (includes alternative crops as specified in the NMP);
 - (v) The realistic/expected yield goal for each crop (as specified in the NMP);
 - (vi) The nitrogen and phosphorus recommendations (or uptake) for each crop for each field (as specified in the NMP);
 - (vii) The methodology or calculations used to derive the amounts of manure, litter, and process wastewater to be land applied (as discussed in the NMP); and
 - (viii) The maximum amount of nitrogen and/or phosphorus derived from all sources of nutrients, for each crop in the NMP, in pounds per acre, for each field (as specified in the NMP and to be submitted annually with the annual report).

9. Changes to the Nutrient Management Plan

- a. The CAFO owner or operator shall provide the EPA Director, if requested, with the most current version of the NMP and identify changes from the previous version, with the exception of the results of calculations of application rates for manure, litter, and process wastewater as required in Part III. B. 9.
 - b. When changes to an NMP are submitted to the EPA Director, the Director will review the revised NMP to ensure that it meets the requirements of the applicable effluent limitations and standards and shall determine whether the changes to the NMP necessitate revision to the terms of the NMP incorporated into the permit issued to the CAFO. The Director must
-

determine whether such changes are substantial. Substantial changes to the terms of a NMP incorporated as terms and conditions of a permit include, but are not limited to:

- i. Addition of new land application areas not previously included in the NMP;
 - ii. Addition of any crop or other uses not included in the terms of the NMP; and
 - iii. Changes to site specific components of the NMP, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the United States.
- c. If the EPA Director determines that the changes to the terms of the NMP are not substantial, the Director will include the revised NMP in the permit record, revise the terms of the permit based on the site specific NMP, and notify the Permittee and the public of any changes to the terms of the permit based on revisions to the NMP.
- d. If the EPA Director determines that the changes to the terms of the NMP are substantial, the Director will notify the public, make the proposed changes and the information submitted by the Permittee available for public review and comment, and respond to all significant comments received during the comment period. The Director may require the Permittee to further revise the NMP, if necessary. Once the Director incorporates the revised terms of the NMP into the permit, the Director will notify the Permittee of the revised terms and conditions of the permit.

10. Manure and Soil Sampling

Manure and process wastewater must be analyzed at least once annually for nitrogen and phosphorus content. Soil phosphorus content shall be analyzed at each application site prior to the first application of any manure or process wastewater and then at least every five years thereafter if used anytime in the five years for land application. The results of these analyses must to be used in determining application rates for manure, litter, and process wastewater.

11. Inspection of Land Application Equipment for Leaks

The Permittee shall annually inspect equipment used for land application of manure, litter, or process wastewater for leaks.

12. Record Keeping Requirements

The Permittee shall maintain for a period of five years complete on-site records, including the site-specific NMP, documenting implementation of all required land application practices, in accordance with the specifications in Part II. B. Inspection, Monitoring, and Recordkeeping Requirements of this permit.

C. Best Management Practices

Land Application Setback Requirements – Manure, litter, or process wastewater may not be applied or stockpiled closer than 100 feet to any down-gradient surface waters of the United States, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters of the United States.

As a compliance alternative, the permittee may:

- (i) substitute a 35-foot wide permanent strip of a dense perennial vegetated buffer where applications of manure, litter, or process wastewater are prohibited, or
- (ii) demonstrate to EPA Region, VII that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback.

D. Agricultural Stormwater

A discharge from the land areas under the control of the Permittee is prohibited, except for discharges of agricultural storm water. For the purposes of this permit, agricultural storm water is a precipitation related discharge of manure, litter, or process wastewater from land areas under the control of the Permittee where the manure, litter, or process wastewater has been applied in accordance with the terms of the nutrient management plan, as specified in this permit.

E. Facility Closure

The following conditions shall apply to the closure of the holding pond(s).

1. Closure of the Holding Pond(s) and Other Surface Impoundments

- (a) The holding pond(s) shall not be abandoned but shall be maintained at all times until closed in compliance with this section.
- (b) The holding pond(s) must be properly closed if the Permittee ceases operation. In addition, if the pond(s) is not in use for a period of 12 consecutive months, it must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either: 1) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or 2) removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. In either case, the Permittee shall notify EPA of the action taken, and shall conduct the routine inspections, maintenance, and record keeping required by this permit as though the structure were in use. Prior to restoration or use of the structure, the Permittee shall notify EPA and provide the opportunity for inspection.
- (c) Closure of the holding pond(s) must be consistent with Natural Resources Conservation Service (NRCS), Conservation Practice Standard, Waste Facility Closure, Code 360. 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 authorized in writing by EPA.
- (d) Unless otherwise authorized in writing by EPA, completion of closure of the pond(s) shall occur as promptly as possible after the Permittee ceases to operate or, if the Permittee has not ceased operations, 12 months from the date on which the use of the structure ceased, unless the lagoons or basins are being maintained for possible future use in accordance with the requirements herein.

F. Requirements for the Transfer of Manure, Litter, and Process Wastewater

In cases where CAFO-generated manure, litter, or process wastewater is sold or given away, the Permittee must comply with the following conditions:

- (a) Maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted operation;
- (b) Record the name and address of the recipient(s);
- (c) Provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater; and
- (d) Retain these records on-site for a period of five years and submit these records to EPA upon request.

Part II. INSPECTION, MONITORING, AND RECORD KEEPING REQUIREMENTS

A. Notification of Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport, and/or Application

1. Discharge of Pollutants

If, for any reason, there is a discharge of pollutants to a water of the United States, the Permittee is required to:

- (a) Call the EPA, Region VII Water Branch Chief, Enforcement & Compliance Assurance Division (ECAD), within 24 hours of becoming aware of the discharge at **913-551-7810 or 913-281-0991** after 5 p.m. Monday - Friday or weekends and holidays; and
 - (b) Notify EPA in writing within **seven (7) days** of the discharge from the facility. The Permittee shall keep a copy of the notification submitted to EPA. The discharge notification shall include the following information:
 - (i) A description of the discharge and its cause, including a description of the flow path to the receiving water body;
 - (ii) An estimate of the flow and volume discharged;
 - (iii) A description of the impact on the receiving water body;
 - (iv) The period of the discharge, including starting dates and times, and if not corrected, the anticipated time it is expected to cease and the steps being taken or to reduce, eliminate, and prevent recurrence of the discharge; and
 - (v) The written discharge notification shall be submitted to the following address:
Chief, Water Branch
Enforcement & Compliance Assurance Division
U.S. EPA REGION VII
11201 Renner Boulevard
Lenexa, KS 66219
 - (vi) And a copy of the written discharge notification shall be submitted to:
Tribal Chairperson
Omaha Tribe of Nebraska
P.O. Box 400
Macy, Nebraska 68039
-

B. Inspection, Monitoring, and Record Keeping Requirements

The Permittee shall inspect, monitor, and record the results of such inspection and monitoring in accordance with the requirements of the following table:

Large CAFO Permit Record Keeping Requirements		
Parameter	Units	Frequency
Permit and Nutrient Management Plan		
CAFO must maintain on-site a copy of the current NPDES permit, including the permit authorization notice	N/A	Maintain at all times
CAFO must maintain on-site a current site specific NMP that reflects existing operational characteristics; operation must also maintain on-site all necessary records to document that the NMP is being properly implemented with respect to the minimum practices defined in 40 CFR § 122.42(e)	N/A	Maintain at all times
Soil and Manure/Wastewater Nutrient Analysis		
Analysis of manure, litter, and process wastewater to determine nitrogen and phosphorus content ¹	ppm or pounds/ton	At least annually
Analysis of soil in all fields where land application activities are conducted to determine phosphorus content ¹	ppm	At least once every 5 years
Operation and Maintenance		
Visual inspection of all water lines	N/A	Daily ²
Inspections at least once a year to determine the sludge and sediment accumulation level in liquid impoundments	N/A	At least annually
Documentation of depth of manure and process wastewater in all liquid impoundments	Feet	Weekly
Weekly inspections at the production area of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the facilities	N/A	Weekly
Documentation of all corrective actions taken; deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction	N/A	When corrective actions are required
Documentation of animal mortality handling practices	Per animal unit	When required

Large CAFO Permit Record Keeping Requirements		
Parameter	Units	Frequency
Design documentation for all manure, litter, and wastewater storage structures including the following information: <ul style="list-style-type: none"> • Volume for solids accumulation • Design treatment volume • Total design storage volume • Days of storage capacity 	All Volumes must be in acre feet or gallons Calendar days	Once in the permit term Updates are required if/when facility design is revised
Documentation of all overflows from all manure and wastewater retention structures and any discharges into waters of the U.S. from manure stockpiles shall include: <ul style="list-style-type: none"> • Date and time of overflow or discharge • Estimated volume of overflow or discharge 	Month/day/yr Volume in gallons	Per overflow event
Land Application		
For each application event where manure, litter, or process wastewater is applied, documentation of the following by field:		
<ul style="list-style-type: none"> • Date of application • Method of application • Weather conditions at the time of application and for 24 hours prior to and following application • Total amount of nitrogen and phosphorus applied 	<ul style="list-style-type: none"> • Month/day/yr • Broadcast or incorporated • Inches/day of precipitation • Pounds/acre N and P 	Per application event
Documentation of the actual crop planted and actual yield for each field	Yield in bushels/acre	Annual
Documentation of test methods and sampling protocols used to sample and analyze manure, litter, and wastewater and soil	N/A	Once in the permit term unless revised
Documentation of the basis for the application rates used for each field where manure, litter, or wastewater is applied	N/A	Once in the permit term unless revised
Documentation showing total nitrogen and phosphorus to be applied to each field including nutrients from the application of manure, litter, and wastewater and other sources	Pounds/acre	Once in the permit term Updates are required if/when facility design is revised
Documentation of manure application equipment inspection	N/A	Annually

¹ Refer to the NRCS Nebraska nutrient management technical standard for the specific analyses to be used.

² Visual inspections shall take place daily during the course of normal operations. Operations may choose to make a weekly entry that the required daily inspections have been completed.

PART III. ANNUAL REPORTING REQUIREMENTS

A. Reporting Deadline

The Permittee must submit an annual report to EPA by March **31ST** of each year. The annual report shall be submitted to EPA, Region VII at:

CAFO Permit Coordinator
Water Division, Permits & Loans Branch
U.S. EPA REGION VII
11201 Renner Boulevard
Lenexa, KS 66219

B. Contents of Annual Report

The annual report must include the following information:

1. The maximum number and type of animals confined at any one time during each month of the year, whether in open confinement or housed under roof;
 2. Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
 3. Estimated amount of total manure, litter and process wastewater transferred to other person(s) by the CAFO in the previous 12 months (tons/gallons);
 4. Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months;
 5. Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume;
 6. A statement indicating whether the current version of the NMP was developed or approved by a certified nutrient management planner;
 7. Actual crops planted and actual yields for each field for the preceding twelve (12) months;
 8. Results of all samples of manure, litter, or process wastewater for nitrogen and phosphorus content for manure, litter, and process wastewater that was land applied;
 9. Results of calculations conducted in accordance with those submitted in the approved NMP;
 10. Amount of manure, litter, and process wastewater applied to each field during the preceding twelve (12) months;
 11. The results of any soil testing conducted during the preceding twelve (12) months; and
 12. The amount of any supplemental fertilizer applied during the preceding twelve (12) months.
-

PART IV. STANDARD PERMIT CONDITIONS

A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR § 122.41, et. seq., this permit incorporates by reference all conditions and requirements applicable to NPDES Permits set forth in the Act, as well as all applicable regulations.

2. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action(s), changes to or termination of the permit, or denial of a permit renewal application.

3. Duty to Reapply

If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The Permittee shall submit a new application to the U.S. EPA, at least 180 days before the expiration date of this permit. The application shall be sent to:

CAFO Permit Coordinator
Water Division, Permits & Loans Branch
U.S. EPA REGION VII
11201 Renner Boulevard
Lenexa, KS 66219

The terms and conditions of this permit continue in force until the effective date of the new permit (or permit denial) only if the Permittee has submitted a timely and complete application under 40 CFR § 122.21 for a renewal permit and the Permitting Authority, through no fault of the Permittee, does not issue a new permit (or deny the permit) before the expiration date of this permit. The permit continued beyond the expiration date remains fully effective and enforceable, subject to the actions set forth in 40 CFR § 122.6(c).

4. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not suspend the Permittee's obligation to comply with the permit condition.

5. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State/Tribal or local laws or regulations.

6. Duty to Provide Information

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

7. Criminal and Civil Liability

Nothing in this permit shall be construed to relieve the Permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of this permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the permit may subject the Permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

8. State/Tribal Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by Section 510 of the Act.

9. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

B. Proper Operation and Maintenance

1. Need to Halt or Reduce Activity not a Defense

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

2. Duty to Mitigate

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

3. Proper Operation and Maintenance

The Permittee shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by the Permittee only when necessary to achieve compliance with the conditions of this permit.

C. Monitoring and Records

1. Inspection and Entry

The Permittee shall allow the EPA, or an authorized representative of EPA, upon the presentation of valid credentials and other documents as may be required by law, entry into where the regulated activities or records are present. The Director must have access to and be able to make copies of any required records; inspect facilities, practices, operations, and equipment; and sample or monitor at reasonable times for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative Sampling

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

3. Retention of Records

The Permittee shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by this permit, and records of all data used to complete the application for this permit, **for a period of at least five years from the date of the sample, measurement, report, or application.** This period may be extended by request of the Permitting Authority at any time. Data collected on site, data used to prepare annual reports, copies of annual reports, and a copy of this NPDES permit must also be maintained on site.

4. Records Content

Records of monitoring information shall include:

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

D. Reporting Requirements

1. Planned Changes

The Permittee shall give notice to the EPA, Region VII as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- (a) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR § 122.29(b); or
 - (b) The alteration or addition could significantly change the nature or increase the quantity of
-

pollutants discharged. This notification also applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR § 122.42(a)(1); or

- (c) The alteration or addition results in a significant change in the Permittee's manure use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit. This includes notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to a nutrient management plan.

2. Anticipated Noncompliance

The Permittee shall give advance notice to the EPA, Region VII of any planned physical alterations or additions or changes in activity which may result in noncompliance with requirements in this permit.

3. Transfers

A permit may be automatically transferred to another party if:

- (a) The Permittee notifies the EPA of the proposed transfer at least 30 days in advance of the proposed transfer date;
- (b) The notice includes a written agreement between the existing and new Permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- (c) The EPA does not notify the existing Permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part (b), above.

4. Twenty-four Hour Reporting

The Permittee shall report any noncompliance that may endanger human health or the environment. Any information must be provided orally within 24 hours from the time that the Permittee becomes aware of the circumstances to the Chief, Water Branch of the Enforcement & Compliance Assurance Division (ECAD) at (913) 551-7810. Reports of noncompliance under this paragraph may be made to the EPA Spill Hotline at (913) 281-0991 if such noncompliance is discovered after regular business hours or on a weekend or holiday, or response assistance from EPA is requested.

A written submission shall also be provided to the EPA, Region VII within five (5) days of the time the Permittee becomes aware of the circumstances. The report shall contain the following information:

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

5. Other Noncompliance

The Permittee shall report all instances of noncompliance not reported under other specific reporting requirements at the time that annual reports are submitted. The reports shall contain the information listed

in this Section under 4 (a), (b), and (c).

6. Other Information

If the Permittee becomes aware that it failed to submit any relevant facts in its application or submitted incorrect information in its application or other reports to the EPA, Region VII, it must promptly submit such facts or information.

E. Signatory Requirements

All applications, reports, or information submitted to the EPA Region VII shall be signed and certified consistent with 40 CFR § 122.22.

1. All permit applications shall be signed as follows:

- (a) For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - (ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; or
- (b) For a partnership or sole proprietorship: By a general partner for a partnership or the proprietor, respectively.

2. All reports shall be signed as follows:

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

- (a) The authorization is made in writing by a person described above;
 - (b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or any individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,
 - (c) The written authorization is submitted to the EPA, Region VII.
-

F. Certification

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

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

G. Availability of Reports

Although requested information must be submitted to the EPA, the Permittee is entitled to assert a business confidentiality claim pursuant to the regulations set forth in 40 CFR Part 2, Subpart B. If the EPA determines the information the Permittee has designated meets the criteria in 40 CFR § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in Subpart B. Unless a confidentiality claim is asserted at the time the requested information is submitted, the EPA may make the information available to the public without further notice to the Permittee.

H. Penalties for Violations of Permit Conditions

The Act provides that any person who violates Sections 301, 302, 306, 307, 308, or 405 of the Act, or any permit condition or limitation implementing such Sections in a permit issued under Section 402 of the Act, is subject to civil monetary penalties not to exceed \$37,500 per day as modified from time-to-time under CFR Part 19 - Adjustment of Civil Monetary Penalties for Inflation for each violation under Section 309 of the Act. Any person who willfully or negligently violates Sections 301, 302, 306, 307, or 308 of the Act, or any permit condition or limitation implementing such Sections, may be subject to a fine or imprisonment pursuant to Section 309(c) of the Act. Nothing in this permit shall be construed to relieve the Permittee of civil or criminal liability for noncompliance.

I. Electronic Submission of Annual Reports

The National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule requires electronic reporting of NPDES information rather than the currently required paper-based reports from the permitted facilities (40 CFR Part 127). After the effective date of the Rule, Permittees will be required to submit their Annual Report electronically using the EPA NPDES Reporting Tool (NeT).

DEFINITIONS

Dewatering Days shall mean those days which have suitable weather and soil conditions for land application of accumulated livestock wastes:

Suitable soil conditions do not exist if:

- (a) the minimum amount to be applied through the irrigation system exceeds the capacity of the soil to store the moisture; or
-

(b) the application rate exceeds the rate of water movement into the soil (soil infiltration rate). High soil moisture or frozen soils will reduce soil infiltration rates.

Suitable weather conditions do not exist if:

- (a) the air temperature is freezing; or
- (b) a precipitation event is occurring or, a precipitation event, capable of producing runoff and erosion, is forecast within 24 hours of the time of planned application.

Director means the EPA Regional Administrator or an authorized representative.

Land application area means land under the control of a CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied. The act of application by the CAFO operator constitutes control and would fall within the bounds of "under the control", independent of any specific agreements.

Manure is defined to include manure, bedding, compost and raw materials, or other materials commingled with manure or set aside for disposal.

Multi-year phosphorus application means phosphorus applied to a field in excess of the crop needs for that year. In multi-year phosphorus applications, no additional manure, litter, or process wastewater is applied to the same land in subsequent years until the applied phosphorus has been removed from the field via harvest and crop removal.

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

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

Waters of the United States shall have the same meaning as in 40 CFR § 122.2 and amended in 40 CFR § 120.2.
