

Nebraska Department of Water, Energy, and Environment

Livestock and Agriculture Section

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Fact Sheet

National Pollutant Discharge Elimination System (NPDES)

General Permit for Concentrated Animal Feeding Operations (CAFOs)

NEG022000 / DWEE ID 995928

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A. Proposed Action – Tentative Determination

On the basis of a preliminary staff review, the Nebraska Department of Water, Energy, and Environment (DWEE) has made a tentative determination to reissue, with changes, the National Pollutant Discharge Elimination System (NPDES) General Permit Number NEG022000 – General Permit for Concentrated Animal Feeding Operations (CAFOs) in the State of Nebraska.

This fact sheet includes:

- Eligibility requirements of the general permit.
- A description of the types of facilities and discharges covered by this proposed permit.
- A description of the proposed effluent limitations.
- Information on the regulations and material supporting the provisions of the proposed general permit.
- Information on public comment, hearing, and appeal procedures.

B. Eligibility

CAFOs eligible for coverage under this permit include those operations which:

1. Are located within the State of Nebraska, but not on Federally Recognized Indian Tribal Land;
2. Meet the definition of a concentrated animal feeding operations as set forth in DWEE Title 130, Chapter 1 008. These are:
 - a. Defined as a large, concentrated animal feeding operation because of size;
 - b. Defined as a medium concentrated animal feeding operation because of size and because animals are in direct contact with waters of the State or waste is discharged to waters of the state through a man-made conduit; or
 - c. Designated as a medium or small concentrated animal feeding operation by the Director.
3. Have constructed livestock waste control facilities (holding ponds, lagoons, or storage pits) capable of controlling all process wastewater including runoff from the 25-year, 24-hour storm event; and
4. Are in compliance with N.A.C. Title 130 – Livestock Waste Control Regulation.

C. Description of Discharge and CAFO Requirements

1. Concentrated Animal Feeding Operations

Concentrated animal feeding operations, or CAFOs, are defined in DWEE Title 130, Chapter 1. These are large animal feeding operations that meet the livestock head requirements of 024 of the Chapter, medium operations that meet the requirements of 029 and because animals are in direct contact with waters of the State, or small or medium animal feeding operations that are designated a CAFO by the DWEE Director.

2. Requirement to Obtain a Permit

As set forth in DWEE Title 130, Chapter 5 001, an owner or operator of a concentrated animal feeding operation that discharges is required to obtain an NPDES permit. Facilities that have the potential to discharge or are anticipated to discharge must obtain coverage under this permit. DWEE requires open lot CAFOs to obtain a permit. Wastewater that is generated from animals in covered confinement are typically exempt from permitting requirements, though their structures and numbers may be on an NPDES permit. CAFOs must obtain coverage either under a general permit or an individual permit, or be exempt as authorized by the Director and Title 130.

3. Effluent Limitation Requirements

As set forth in DWEE Title 130, Chapter 7 001, existing large beef, dairy, horse, sheep, swine, poultry, and veal calf concentrated animal feeding operations and new beef, dairy, horse, and sheep concentrated animal feeding operations, shall not discharge of manure, litter, or process wastewater pollutants into waters of the state from the production area except that when precipitation causes an overflow of manure,

litter, or process wastewater, the overflow may be discharged into waters of the state provided the production area is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from a 25-year, 24-hour rainfall event; and the facility is operated in accordance with these and Title 130 regulations.

DWEE has clarified language in NEG022000 to meet Title 130 requirements. Under Title 130, Chapter 7 002, for new swine, poultry, and veal calf concentrated animal feeding operations, there shall be no discharge of manure, litter, or process wastewater pollutants into waters of the state from the production area. The production area shall be operated in accordance with these regulations and designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including all runoff and direct precipitation.

CAFOs that only have animals in covered confinement do not need to apply for the general permit and are not subject to the effluent limitations of this permit. They are not anticipated to discharge due to storm events. However, facilities that have open lots and the potential to discharge should still have the structures and animals under cover listed on the NPDES permit. Livestock waste from confinement that comingles with waste generated under open lots may still be subject to the requirements of this permit.

Production area, process wastewater, and livestock wastes are all defined in DWEE Title 130, Chapter 1.

D. Summary of the Proposed Changes in the Draft Permit

The new or modified requirements in the proposed draft permit are summarized below.

1. The applicability of the permit will be to all CAFOs as defined in Title 130, Chapters 1, 5, and 7, rather than only CAFOs with cattle. The text has been changed multiple times in the permit to address this change in applicability.
2. Eligibility requirements have been updated to include all animal species rather than only cattle CAFOs.
3. The permit applicability for only large CAFOs is removed. The permit is applicable to all open lot CAFOs that discharge or have the potential to discharge to waters of the State.
4. Production area requirements are updated in the permit.
5. Permit terms for a nutrient management plan are updated.
6. DWEE has updated the permit to allow 25-Year, 24-Hour rainfall event data to be obtained from NOAA.
7. Electronic reporting requirements are included in the permit.
8. Duty to comply section is updated.

E. Application Requirements

The application for coverage under this NPDES General Permit must include a detailed site-specific nutrient management plan (NMP) or updates to the current approved NMP that meets the requirements of Title 130. The NMP must include details of the livestock waste control facilities and the production areas, details on the land application procedures that ensure appropriate agricultural utilization of the nutrients in the wastes and record keeping requirements that document compliance with the NMP.

Prior to granting coverage under this permit, the Department will issue a public notice on its webpage for thirty (30) days that identifies elements of the NMP that will become terms of the CAFO's NPDES General Permit. If further substantial NMP changes happen after issuance, the modified NMP will also be noticed on the Department's webpage for a fifteen (15) day period. The permit terms of the NMP are the information, protocols, procedures, best management practices, and other conditions that ensure:

1. Adequate storage of manure, litter, and process wastewater, including proper operation and maintenance of the storage structures;
2. Proper management of mortalities;
3. Diversion of clean water from the production area, as appropriate;
4. Confined animals are not in contact with waters of the State;

5. Chemicals and other contaminants are properly handled;
6. Appropriate site-specific conservation practices to be implemented are identified;
7. Protocols are identified for testing of manure, litter, process wastewater and soil;
8. Protocols are identified to land apply manure, litter, or process wastewater in accordance with the site-specific nutrient management practices; and
9. Specific records are identified and maintained to document compliance with the NMP.

On October 22, 2015, EPA published the Clean Water Act National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule, which requires electronic reporting of NPDES information reports from the permitted facilities and notices of intent to discharge in compliance with a general permit. Facilities must submit electronic information required in Appendix A of 40 CFR Part 127, 40 CFR 122.26(b)(15), and 40 CFR 122.26(b)(14)(x).

Under Phase II, NPDES permittees and other regulated entities that are currently required to submit general permit notice of intents and reports must begin submitting them electronically by December 21, 2025. DWEE will be working with EPA to ensure the state and permitted facilities are in compliance with the rule. DWEE will reach out to Nebraska facilities regarding electronic applications and reporting and ensure the applications meet the requirements in Title 130 and the Livestock Waste Management Act.

F. Requirements for Specific CAFO Technologies

1. Truck Washes

Many CAFOs in Nebraska have truck washes that rinse livestock trucks. Wash water in contact with livestock waste is considered process wastewater and must be treated by livestock waste control facilities. To be covered by the NPDES general permit and a construction and operating permit under Title 130, the truck wash must only process trucks and vehicles with livestock wastes from only the permitted facility. Additionally, the truck wash must not use cleaning products to wash trucks. If the truck wash handles livestock waste from another facility or non-livestock waste, including any cleaning products, it must instead be permitted under DWEE Titles 123 and 119. If that truck wash land applies waste or wastewater, it must receive a NPDES permit under DWEE Title 119.

2. Digesters

In the state of Nebraska, some animal feeding operations may process livestock waste with digester systems. Digester requirements are facility-specific, but they must receive DWEE review and approval prior to construction and operation. Digesters may be covered under the CAFO NPDES general permit, but they may also be separate from a facility. Please contact DWEE to discuss digester requirements.

Additionally, all digesters must comply with Title 129 Air Quality Regulation requirements. If a facility meets minimum requirements, it must obtain a Title 129 air permit. Title 129 may require an air construction permit prior to initiating construction.

G. Supporting Documentation

The following documents and regulations were used in the preparation of the draft permit.

1. DWEE Title 115, *Rules of Practice and Procedure*, June 24, 2019.
2. DWEE Title 117, *Nebraska Surface Water Quality Standards*, June 24, 2019.
3. DWEE Title 118, *Ground Water Quality Standards and Use Classifications*, September 20, 2023.
4. DWEE Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*, September 20, 2023.
5. DWEE Title 123, *Rules and Regulations for the Design, Operation, and Maintenance of Wastewater Works*, September 4, 2019.
6. DWEE Title 129, *Nebraska Air Quality Regulations*, September 28, 2022.

7. DWEE Title 130, *Livestock Waste Control Regulations*, October 4, 2011.
8. 40 CFR Part 122, *EPA Administered Permit Programs: the National Pollutant Discharge Elimination System*.
9. 40 CFR Part 412, *Concentrated Animal Feeding Operations (CAFO) Point Source Category*.
10. Livestock Waste Management Act; Neb. Rev. Stat. Sections 54-2416 to 54-2438.

H. Information Requests

Inquiries concerning the draft permit, its basis or the public comment process may be directed to:

Brad Edeal Telephone: (402) 471-0282

Individuals requiring special accommodations or alternate formats of materials should notify the Department by calling (402) 471-2186. TDD users should call (800) 833-7352 and ask the relay operator to call the Department at (402) 471-2186.

Copies of the application and other supporting material used in the development of the permit are available for review and copying at the Department's office between 8:00 A.M. and 5:00 P.M. on weekdays. Copies of supporting documentation can also be found on the Department website.

Location Address: 245 Fallbrook Blvd. Suite 100, Lincoln, Nebraska

Mailing Address: Livestock and Agriculture Section
Nebraska Department of Water, Energy, and Environment
245 Fallbrook Blvd. Suite 100
Lincoln, Nebraska 68521

I. Submission of Formal Comments or Requests for Hearing

The date on which the public comment period ends is specified in the public notice. During the public notice period, the public may submit formal comments or objections, and/or petition the Department to hold a public hearing concerning the issuance of the draft permit. All such requests need to: be submitted in written form, state the nature of the issues to be raised, and present arguments and factual grounds to support them. The Department shall consider all written comments, objections and/or hearing petitions, received during the public comment period, in making a final decision regarding permit issuance.

Formal comments, objections and/or hearing requests need to be submitted to:

Brad Edeal; Livestock and Agriculture Section

Location Address: 245 Fallbrook Blvd. Suite 100, Lincoln, Nebraska

Mailing Address: Nebraska Department of Water, Energy, and Environment
245 Fallbrook Blvd. Suite 100
Lincoln, Nebraska 68521

Note: Comments may be emailed to dwee.livestockandag@nebraska.gov. Please contact the Department if you have further questions on how to provide comments or request a hearing.