



Fact Sheet Addendum for Proposed Permit Modification

The U.S. Environmental Protection Agency (EPA) Proposes to Modify a National Pollutant Discharge Elimination System (NPDES) Permit to Discharge Pollutants Pursuant to the Provisions of the Clean Water Act (CWA) to:

Concentrated Animal Feeding Operations (CAFOs) in the State of Idaho (IDG010000)

Public Comment Start Date: June 6, 2024

Public Comment Expiration Date: July 8, 2024

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EPA PROPOSES TO MODIFY THE NPDES PERMIT

The U.S. Environmental Protection Agency (EPA) proposes to modify the National Pollutant Discharge Elimination System (NPDES) general permit for Concentrated Animal Feeding Operations (CAFOs) in Idaho excluding Tribal lands (Permit). This is the second public comment period on the proposed permit modification. The first public comment period on the proposed modification was open from July 18 to September 1, 2023. The EPA is only seeking comment on the following new conditions that have been added to the permit since the previous 2023 proposed modification:

- Removal of Section II.B.9.a in the draft permit modification, regarding land application on surface irrigated fields.
- Modification of Section II.B.9.b (now Section II.B.9.a of the draft permit modification), regarding required visual inspections of land application events and land application setbacks, buffers, or compliance alternatives.
- Modification of various elements of the nutrient management plan (Section III.A.2.a in the draft permit modification).

In addition to these proposed changes, the EPA has updated the penalty amounts for certain permit violations and introduced some editorial changes to improve the readability of the permit. The EPA is not accepting comments on these changes.

This Fact Sheet includes:

- information on public comment, public hearing, and appeal procedures; and
- a description of and technical information supporting the proposed revisions to the Permit.

For other technical information about this permitting action, please refer to the 2019 fact sheet or the 2023 permit modification fact sheet, available at: <https://www.epa.gov/npdes-permits/npdes-general-permit-concentrated-animal-feeding-operations-cafos-idaho>.

STATE CLEAN WATER ACT SECTION 401 CERTIFICATION

On April 7, 2020, the Idaho Department of Environmental Quality (IDEQ) provided a final certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1341, for the Permit that was public noticed in October 2019. Since the proposed revisions to the Permit result in as stringent or more stringent conditions, a new CWA section 401 certification is not necessary for this modification. On May 24, 2023, IDEQ provided a memorandum to EPA with updated agency contact information, as well as hyperlinks to be included as an attachment to their 2020 final CWA Section 401 Certification, which was included as an appendix to the July 2023 Fact Sheet for the permit modification.

PUBLIC COMMENT

On July 18, 2023, the EPA proposed a permit modification in the federal register for public comment. The proposed modification, and comments received during that public comment period, can be viewed at: <https://www.epa.gov/npdes-permits/npdes-general-permit-concentrated-animal-feeding-operations-cafos-idaho>. The EPA is only seeking comments on the changes to the permit that are listed in the section above.

Persons wishing to comment on, or request a Public Hearing for, the draft permit modification may do so in writing by the expiration date of the Public Comment period. A request for a Public Hearing must state the nature of the issues to be raised as well as the requester's name, address and telephone number. All comments and requests for Public Hearings must be in writing and should be submitted to the EPA as described below.

By the expiration date of the public comment period, all written comments and requests must be submitted to epar10wd-npdes@epa.gov with the subject line: Public Comments on IDG010000.

After the Public Notice expires, and all comments from this comment period and the 2023 comment period have been considered, the EPA will make a final decision regarding the draft permit modification.

Pursuant to Section 509(b)(1) of the Clean Water Act, 33 U.S.C. § 1369(b)(1), any interested person may appeal the permit modification in the Ninth Circuit Court of Appeals within 120 days following notice of the EPA's final decision for the permit.

DOCUMENTS ARE AVAILABLE FOR REVIEW

The draft NPDES permit modification, permit modification fact sheet and other information can be downloaded from the internet at <https://www.epa.gov/npdes-permits/npdes-general-permit-concentrated-animal-feeding-operations-cafos-idaho>

The draft NPDES permit modification, permit modification fact sheet and related documents are also available electronically upon request by contacting Nicholas Peak.

For technical questions regarding the draft permit modification or permit modification fact sheet, contact Nicholas Peak at the 208-378-5765 or peak.nicholas@epa.gov. Services can be made available to persons with disabilities by contacting Audrey Washington at (206) 553-0523.

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I. Introduction

EPA Region 10 reissued the NPDES General Permit for CAFOs in Idaho (IDG010000) on May 13, 2020; the permit became effective on June 15, 2020. Subsequently, Food & Water Watch and Snake River Waterkeeper (Petitioners) filed a Petition for Review in the Ninth Circuit Court of Appeals challenging the Permit on the basis that it did not contain representative effluent monitoring to ensure compliance with all applicable effluent limitations in the permit in violation of the Clean Water Act and its implementing regulations. The Court granted the petition, in part, holding that the permit failed to include monitoring to ensure compliance with the discharge prohibitions in the permit. Specifically, the Court found that the Permit failed to include monitoring for underground discharges from the production area that ultimately reach surface waters and monitoring for dry weather discharges from land application areas. The Permit was remanded to the EPA to address these deficiencies and remains in effect at this time.¹

On July 18, 2023, the EPA proposed a permit modification for public comment which addressed the deficiencies found by the Court. This proposed permit, and comments received on the proposed modification, can be viewed online at: <https://www.epa.gov/npdes-permits/npdes-general-permit-concentrated-animal-feeding-operations-cafos-idaho>. Partly in response to comments received during the July 18, 2023 public comment period, and for other reasons as described below, the EPA is now proposing further modifications as described in this Fact Sheet addendum.

As described in the Fact Sheet for the 2019 draft permit, the Idaho Department of Environmental Quality (IDEQ) is now the NPDES permitting authority in Idaho. However, pursuant to the terms of the NPDES Memorandum of Agreement between the EPA and Idaho, the EPA retains jurisdiction over permits that were appealed prior to the transfer of authority to IDEQ. Once the EPA has addressed the Court's remand, this Permit will be transferred to IDEQ to administer.

This modification will not change the expiration date of the permit of June 14, 2025.

II. Proposed Modifications to General Permit

A. Surface Irrigation Runoff

Section II.B.9.a of the 2023 draft permit modification stated that “There shall be no application of manure, litter, or process wastewater on fields with surface irrigation (e.g., flood or furrow irrigation).” The EPA received comments expressing concern that this prohibition failed to recognize proper agronomic practices that include use of surface irrigation in harmony with land application of manure, litter or process wastewater in such a manner that irrigation runoff does not reach waters of the United States (WOTUS). (See comments from David P. Claiborne of

¹ Initially, the Court vacated the Permit; however, the EPA filed a Motion for Rehearing requesting that the Court modify the Order to remand the Permit to the EPA which the Court granted. Therefore, the EPA retains jurisdiction over the Permit which remains in effect.

Sawtooth Law Offices, PLLC (available at <https://www.epa.gov/npdes-permits/npdes-general-permit-concentrated-animal-feeding-operations-cafos-idaho>).

The EPA agrees with this comment and, thus, is proposing to remove the strict prohibition of land application on surface irrigated fields in Section II.B.9.a of the permit. However, as already set forth in Section II.B.9 of the permit, any dry weather discharge of manure, litter, or process wastewater to WOTUS from a CAFO, as a result of land application, are prohibited by the permit.

B. Visual Inspections of Land Applications

Section II.B.9.b of the 2023 draft permit modification (now Section II.B.9.a in 2024 draft modification) required a visual inspection of the downgradient edge of the field and any other potential discharge locations during any land application of liquid manure or process wastewater to a field when the permittee has an INTRA or Phosphorus Site Index risk assessment rating of medium or high. There were several comments concerning the lack of a visual inspection requirement when facilities are conducting such applications when the permittee does not have a medium or high rating. These comments stated that even low risk discharges carry the potential to pollute surface waters without proper monitoring. (See comments from Food & Water Watch, Snake River Waterkeeper, and the Center for Biological Diversity (available at <https://www.epa.gov/npdes-permits/npdes-general-permit-concentrated-animal-feeding-operations-cafos-idaho>).

The EPA agrees with these comments and is proposing to modify Section II.B.9.b (now Section II.B.9.a) to require visual inspections regardless of INTRA or Phosphorus Site Index risk assessment rating.

C. Nutrient Management Plan Content

The EPA is proposing to modify several parts of the nutrient management plan (NMP) permit requirements (Sections III.A.2.a(ii-iv)).

- Section III.A.2.a(ii)
 - The EPA added specificity regarding who is qualified to conduct the evaluation of compliance with NRCS Appendix 10D and IDAPA 02.04.14.030.01: a professional engineer, geologist, hydrogeologist, or another qualified individual.

- Section III.A.2.a(iii-iv)

Section III.A.2.a(iii-iv) from the previous permit have now been combined into one section, Section III.A.2.a(iii). The following modifications are proposed:

- The removal of the INTRA or Phosphorus Site Index risk assessment ratings in Section II.B.9.b of the 2023 permit, described above in Section II.B of this fact sheet, necessitated a modification to Section III.A.2.a(iv) which also relied on these ratings. In the draft permit modification, now Section III.B.2.a(iii),

permittees must include a subsurface discharge monitoring plan with their nutrient management plan unless the exceptions in (1) or (2) below are met:

- 1) Wastewater or manure storage structures are evaluated by a professional engineer, geologist, hydrogeologist, or other qualified individual, documenting that each structure does not have a subsurface discharge to WOTUS. or;
- 2) The permittee confirms and documents in the NMP that each wastewater and manure storage structure is properly operated and maintained in accordance with Section III.A.2.a.ii of the permit, and constructed of concrete or steel, or with a double-layer synthetic liner with leak detection, and is properly operated and maintained in accordance with Section III.A.2.a.ii.