

CAH-3.  
Omitted  
CAH-4.  
Docket# P-2188, 054, PP&L Montana, LLC

*Consent Agenda—Energy Projects—  
Certificates*

CAC-1.  
Docket# CP00-233, 003, Southern Natural Gas Company  
CAC-2.  
Docket# CP01-111, 000, Algonquin Gas Transmission Company and Texas Eastern Transmission LP  
CAC-3.  
Docket# CP01-141, 000, PG&E Gas Transmission, Northwest Corporation  
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Docket# CP01-31, 000, Kern River Gas Transmission Company  
Other#s CP01-31, 001, Kern River Gas Transmission Company  
CAC-5.  
Docket# CP01-45, 000, Colorado Interstate Gas Company  
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Docket# CP00-40, 000, Florida Gas Transmission Company  
Other#s CP00-39, 000, Gulf South Pipeline Company, LP (Formerly Koch Gateway Pipeline Company);  
CP00-40, 001, Florida Gas Transmission Company;  
CP00-40, 002, Florida Gas Transmission Company  
CAC-11.  
Docket# CP01-34, 000, Transcontinental Gas Pipe Line Corporation  
Other#s CP01-32, 000, Williams Gas Processing-Gulf Coast Company, L.P.  
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Docket# CP01-103, 000, Transcontinental Gas Pipe Line Corporation  
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CAC-13.  
Docket# CP01-157, 000, Georgia-Pacific Corporation  
CAC-14.  
Docket# CP01-46, 001, National Fuel Gas Supply Corporation  
CAC-15.  
Docket# CP00-65, 003, Tennessee Gas Pipeline Company  
CAC-16.  
Docket# CP01-259, 000, Ohio Valley Hub, L.L.C.  
CAC-17.  
Docket# CP96-711, 001, Discovery Producers Services LLC  
Other#s CP96-712, 001, Discovery Gas Transmission LLC  
CP96-719, 001, Discovery Gas Transmission LLC

CAC-18.  
Docket# CP00-350, 000, Bangor Gas Company, L.L.C.

**Energy Projects—Hydro Agenda**

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**Energy Projects—Certificates Agenda**

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**Markets, Tariffs and Rates—Electric Agenda**

E-1.  
Reserved

**Markets, Tariffs and Rates—Gas Agenda**

G-1.  
Reserved

**David P. Boergers,**  
*Secretary.*

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**ENVIRONMENTAL PROTECTION  
AGENCY**

**[FRL-7012-6]**

**Final Issuance of National Pollutant  
Discharge Elimination System  
(NPDES) General Permit for  
Discharges From Concentrated Animal  
Feeding Operations in Arizona**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Final NPDES General Permit.

**SUMMARY:** The Regional Administrator, EPA, Region 9, is today issuing an NPDES general permit (permit No. AZG800000) for discharges from concentrated animal feeding operations (CAFOs) in Arizona. A notice of EPA's proposal to issue the permit was published in the **Federal Register** on Friday, September 1, 2000. The public comment period for this general permit ended on November 20, 2000. The final permit establishes effluent limitations, prohibitions, best management practices and other conditions governing the discharge of pollutants to waters of the United States from CAFOs in Arizona. **DATES:** This general permit shall be effective on August 27, 2001. Deadlines for submittal of notices of intent to be governed by the permit are provided in part III, section B of the general permit. Today's general permit also provides additional dates for compliance with permit requirements.

**ADDRESSES:** The index to the administrative record for the final general permit is available from the EPA Region 9 office in San Francisco. The NPDES general permit and other related documents in the administrative record

are on file at the EPA Region 9 office at the following address: U.S. EPA, Region 9, CWA Standards and Permits Office (WTR-5), 75 Hawthorne Street, San Francisco, CA 94105-3901. The records are available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. For appointments to examine the administrative record, please call Jacques Landy at (415) 744-1922 or Shirin Tolle at (415) 744-1898. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For further information on this permit please contact Jacques Landy or Shirin Tolle, EPA Region 9, at the address listed above or telephone Jacques Landy at (415) 744-1922 or Shirin Tolle at (415) 744-1898. Copies of the permit, permit appendices, fact sheet and response to comments document will be provided upon request and are also available at EPA, Region 9's website at <http://www.epa.gov/region09/water/npdes/index.html> (permit link located under section heading Final NPDES Permits).

**SUPPLEMENTARY INFORMATION:**

**Summary of Terms and Conditions of  
General Permit**

*A. Facility Coverage*

This permit covers Concentrated Animal Feeding Operations (CAFOs as defined in 40 CFR 122.23(b)) in Arizona and in Indian Country in Arizona as set forth in part II, section A of the permit. An owner or operator of a CAFO eligible for coverage under this general permit may apply for an individual permit rather than seek coverage under the general permit.

An owner or operator of a CAFO seeking coverage under this permit must submit a Notice of Intent (NOI) to EPA, and to the Arizona Department of Environmental Quality (ADEQ) or the appropriate Indian Tribe. A NOI for an existing CAFO must be submitted within 180 days after the effective date of this permit. An owner or operator seeking coverage for a new facility must submit a NOI, and additional information identified in Appendix C of the permit, at least ninety days before the facility becomes a CAFO.

This permit will terminate five years after its effective date. In accordance with 40 CFR 122.28(b)(3), EPA may require any discharger authorized by this permit to apply for and obtain an individual NPDES permit, and terminate or revoke coverage under the general permit. Owners or operators authorized by this permit may also

request to be excluded from the general permit's coverage by applying for an individual permit.

#### *B. Effluent Limitations*

This permit includes technology-based effluent limitations and standards based on the effluent limitations guidelines for the Feedlots Point Source Category, 40 CFR part 412. The permit also includes conditions designed to achieve water quality standards established under CWA, section 303, including Arizona's water quality criteria codified at Arizona Administrative Code Title 18, Chapter 11, and federally promulgated water quality standards codified at 40 CFR 131.31. Provisions requiring the use of best management practices (BMPS) to control or abate the discharge of pollutants are included in the permit pursuant to Clean Water Act (CWA) section 402(a)(1) and 40 CFR 122.43 and 122.44(k). Monitoring requirements are included pursuant to 40 CFR 122.48 and 122.44(i), and conditions applicable to all permits are included pursuant to 40 CFR 122.41.

A fact sheet briefly setting forth the principal facts and significant factual, legal, methodological and policy questions considered in preparing this final general permit is available as part of the public record for this action. In addition, a response to the comments received in response to the public notice of this permit has been prepared pursuant to 40 CFR 124.17.

#### *C. EPA issuance of General Permits*

Arizona has not received approval to issue NPDES permits and otherwise administer the NPDES program. Accordingly, EPA Region 9 is issuing this general permit governing discharges from CAFOs pursuant to CWA section 402.

EPA may issue either individual or general NPDES permits. General permits, and the conditions under which they may be issued, are described at 40 CFR 122.28. EPA may issue a general permit to regulate a category of point sources, if the sources all involve substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations, require similar monitoring, and are more appropriately controlled under a general permit than under individual permits. EPA has determined that CAFOs eligible for coverage pursuant to Part II of the permit meet the criteria set forth in 40 CFR 122.28 and that issuance of the general permit is appropriate pursuant to that provision.

#### *D. National Environmental Policy Act*

Pursuant to CWA section 511(c), and 40 CFR part 6, EPA has conducted an environmental review of the proposed action, and has determined that no significant impacts are anticipated and that an Environmental Impact Statement (EIS) is not required. EPA has prepared an environmental assessment and Finding of No Significant Impact (FNSI), which are available as part of the public record for this action.

This permit requires that a person seeking coverage for a new CAFO must submit to EPA, and to the State or Indian Tribe, as appropriate, an Environmental Information Document (EID), containing the information identified in Appendix C, no later than 90 days before the operation becomes a CAFO. This requirement will provide EPA an opportunity to conduct an environmental review, determine if any significant impacts are anticipated, determine if an environmental impact statement is required and otherwise ensure compliance with NEPA requirements, with respect to the proposed new source.

#### *E. Endangered Species Act*

Section 7(a)(2) of the Endangered Species Act (ESA) requires that Federal agencies consult with the U.S. Fish and Wildlife Service (FWS) to insure that any action authorized, funded or carried out by them (also known as an "agency action") is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Part II, section B.2 of the permit expressly prohibits coverage under the permit of any CAFO which is likely to adversely affect a listed or proposed to be listed threatened or endangered species or its critical habitat. Any such facility would be required to apply for and obtain an individual NPDES permit, and the process of issuing the individual permit would fully address protection of endangered and threatened species and their habitat through the section 7 consultation process of the Endangered Species Act (ESA).

Following discussions with FWS, EPA has decided to issue the permit pursuant to ESA section 7(d), without concluding the consultation with FWS, based on the finding that this action will not result in an irreversible or irretrievable commitment of resources.

#### *F. National Historic Preservation Act*

The National Historic Preservation Act (NHPA) and implementing regulations require the Regional Administrator, before issuing a permit,

to adopt measures when feasible to mitigate potential adverse effects of the permitted activity on properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation. This permit provides that CAFOs which are likely to adversely affect properties listed or eligible to be listed in the National Register of Historic Places are ineligible for coverage under the permit. This permit also requires that a person seeking coverage for a new CAFO must submit to EPA, and to the State or Indian Tribe, as appropriate, an Environmental Information Document (EID), containing information related to impacts upon historical or archeological resources, no later than 90 days before the operation becomes a CAFO. This requirement will provide EPA an opportunity to ensure compliance with NHPA requirements with respect to the proposed new source.

#### *G. Permit Appeal Procedures*

Within 120 days following notice of EPA's final decision for the general permit under 40 CFR 124.15, any interested person may appeal the permit in the Federal Court of Appeals in accordance with section 509(b)(1) of the CWA. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21 (and authorized at 40 CFR 122.28) and then petition the Environmental Appeals Board to review any condition of the individual permit pursuant to 40 CFR 124.19.

#### *H. Paperwork Reduction Act*

The information collection required by this permit has been approved by Office of Management and Budget under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., in submission made for the NPDES permit program and assigned OMB control numbers 2040-0086 (NPDES permit application) and 2040-0004 (discharge monitoring reports).

#### *I. Economic Impact (Executive Order 12866)*

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of

the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this final general permit is not a "significant regulatory action" under the terms of Executive Order 12866.

#### *J. Unfunded Mandates Reform Act*

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)"). UMRA section 102 defines "regulation" by reference to section 658 of Title 2 of the U.S. Code, which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedures Act (APA)], or any other law \* \* \*".

As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus,

NPDES general permits are not "rules" for RFA or UMRA purposes.

EPA has determined that this final general permit does not contain a Federal requirement that may result in expenditures of \$100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that this final general permit will not significantly nor uniquely affect small governments. For UMRA purposes, "small governments" is defined by reference to the definition of "small governmental jurisdiction" under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

This final general permit also will not uniquely affect small governments because compliance with the permit conditions affects small governments in the same manner as any other entities seeking coverage under the final general permit.

#### *K. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. Under 5 U.S.C. 605(b), no Regulatory Flexibility Analysis is required where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Agency takes the position that NPDES general permits are not subject to rulemaking requirements under APA section 553 or any other law. The requirements of APA section 553 apply only to the issuance of "rules," which the APA defines in a manner that excludes permits. See APA section 551(4), (6) and (8). The CWA also does not require publication of a general notice of proposed rulemaking for general permits. EPA publishes draft general NPDES permits for public comment in the **Federal Register** in order to meet the applicable CWA procedural requirement to provide "an opportunity for a hearing." See CWA section 402(a), 33 U.S.C. 1342(a).

Nevertheless, the Agency has determined that this permit will not have a significant economic impact on a substantial number of small entities. The permit requirements have been designed to minimize significant administrative and economic impacts on small entities and should not have a

significant impact on regulated sources in general. Moreover, the final general permit reduces a significant burden on regulated sources of applying for individual permits.

#### *L. Signature*

Accordingly, I hereby find consistent with the provisions of the RFA, that this final general permit will not have a significant impact on a substantial number of small entities.

**Authority:** Clean Water Act, 33 U.S.C. 1251 et seq.

#### **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.), owners or operators of a concentrated animal feeding operation that submit a completed Notice of Intent in accordance with part III, section A for a concentrated animal feeding operation located in the area specified in part II, section A and eligible for permit coverage under part II, section B are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit becomes effective on August 27, 2001.

This permit and the authorization to discharge expire at midnight, August 26, 2006.

Dated: July 5, 2001.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

#### **Environmental Protection Agency Region 9 Concentrated Animal Feeding Operations (CAFOs) National Pollutant Discharge Elimination System (NPDES) General Permit NO. AZG800000 For the State of Arizona**

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## Part I. Authority

This permit is issued pursuant to Clean Water Act, section 402.

## Part II. Permit Coverage

### A. Area

The permit covers the State of Arizona and Indian Country in Arizona subject to the jurisdiction of the following Indian Tribes: Ak-Chin, Cocopah, Colorado River, Fort McDowell Mohave-Apache, Fort Mohave, Fort Yuma-Quechan, Gila River, Havasupai, Hopi, Hualapai, Kaibab Paiute, Navajo, Pascua Yaqui, Salt River Pima-Maricopa, San Carlos, San Juan Southern Paiute, Tohono O'odham, Tonto Apache, White Mountain Apache, Yavapai-Apache (Camp Verde), and Yavapai-Prescott.

### B. Sources

The permit covers concentrated animal feeding operations (CAFOs) in the permit area, except any CAFO that:

1. has been notified by the Director to apply for an individual permit pursuant to 40 CFR 122.28(b)(3);
2. is likely to adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat;
3. is likely to adversely affect properties listed or eligible to be listed in the National Register of Historic Places; or
4. becomes a CAFO after the effective date of this permit and meets any of the following conditions: (a) Discharges to a water quality limited segment listed for: Total nitrogen, nitrogen species, total phosphorus, turbidity, fecal coliform or

E.Coli, (b) discharges to a "Unique Water" identified in Arizona Administrative Code R18-11-112, or (c) is located within the 100 year floodplain.

### C. Reopener Clause for Endangered Species Protection

This permit may be modified or revoked and reissued based on the results of Endangered Species Act section 7 consultation with the U.S. Fish and Wildlife Service.

## Part III. Application for Coverage

### A. Notice of Intent

An owner or operator of a CAFO seeking coverage under this permit must submit a completed "Notice of Intent to be Covered by General Permit No. AZG800000 for Concentrated Animal Feeding Operations" (NOI), attached as Appendix A, to: US EPA, Region 9, Attn.: AZG800000/NOI, WTR-7, 75 Hawthorne St., San Francisco, CA 94105.

An owner or operator seeking coverage for a CAFO not in Indian Country subject to the jurisdiction of an Indian Tribe identified in Part II.A. must submit a copy of the completed NOI to: Arizona Department of Environmental Quality, Water Quality Compliance Section, Mail Code M0501, 3033 N. Central Avenue, Phoenix, AZ 85012.

An owner or operator seeking coverage for a CAFO in Indian Country subject to the jurisdiction of an Indian Tribe identified in Part II.A. must submit a copy of the completed NOI to the appropriate Indian Tribe. See, Appendix D, Contact Names and Addresses.

### B. Deadline for Notice of Intent

The deadline for submitting a completed NOI is:

1. For an operation which is a CAFO on the effective date of the permit, 180 days after the effective date of the permit;
2. For an operation designated as a CAFO pursuant to 40 CFR 122.23(c), 90 days after designation as a CAFO; and
3. For an operation which becomes a CAFO after the effective date of the permit, 90 days before the operation becomes a CAFO.

### C. Additional Information Regarding New CAFOs

A person seeking coverage under this permit for an operation which becomes a CAFO after the effective date of the permit and which meets the definition of a "new source" as provided in Part VII.S of this permit, must also submit to EPA, and to the State or Indian Tribe, as appropriate, an "Environmental

Information Document" (EID), containing the information identified in Appendix C, no later than 90 days before the operation becomes a CAFO. For assistance in determining whether an operation which becomes a CAFO after the effective date of the permit meets the definition of new source, please contact Shirin Tolle at (415) 744-1898 or Jacques Landy at (415) 744-1922.

### D. Commencement of Authorization to Discharge

Authorization to discharge from an eligible CAFO in accordance with the permit begins:

1. For an operation which is a CAFO on the effective date of the permit, or designated as a CAFO pursuant to 40 CFR 122.23(c), 24 hours after a complete and timely NOI is mailed to EPA; and
2. for an operation which becomes a CAFO after the effective date of the permit, 90 days after a complete and timely NOI and EID is mailed to EPA, unless the CAFO is notified by EPA during the 90-day period following mailing of the NOI and EID, that more than 90 days are required to process the NOI and conduct the National Environmental Policy Act review required by 40 CFR 122.29(c).

### E. Expiration, Termination or Revocation of Coverage

This permit expires five years after its effective date. If this permit is not reissued prior to its expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and any discharger authorized by this permit prior to the expiration date will remain authorized under this permit until (i) the permit is reissued or (ii) EPA publishes a determination not to reissue this permit. In accordance with 40 CFR 122.28(b)(3), EPA may require any discharger authorized by the permit to apply for and obtain an individual NPDES permit, and terminate or revoke coverage under this general permit. In accordance with 40 CFR 122.28(b)(3), any owner or operator authorized by the permit may request to be excluded from coverage of the general permit by applying for an individual permit.

## Part IV. Permit Requirements

### A. Effluent Limitations and Discharge Prohibitions

1. There shall be no discharge of waste, process waste water, or process waste water pollutants to waters of the United States except when storm events, either chronic or catastrophic, cause an overflow of process waste water from a

facility properly designed, constructed, maintained, and operated to contain:

a. All process generated waste waters resulting from the operation of the CAFO (such as wash water, parlor water, watering system overflow); plus

b. All contaminated runoff from a 25-year, 24-hour storm event.

2. Except for discharges which are

a. composed entirely of storm water runoff, snow melt runoff and/or

b. return flows from irrigated agriculture, originating from a land area upon which manure and/or waste water from a CAFO has been applied in accordance with a Best Management Practices Plan (BMP Plan) under Part IV.B.1 and with a Nutrient Management Plan (NMP) under Part IV.B.3.a, there shall be no discharge which causes or contributes to a violation of a State or, if appropriate, tribal water quality standard.

3. Discharges of manure or process waste water from waste water control or retention structures to waters of the United States by means of a hydrologic connection are prohibited.

#### *B. Special Conditions*

##### 1. Best Management Practices (BMP) Plan

a. Deadlines for developing and implementing a BMP Plan

A permittee must develop and implement a BMP Plan for the CAFO covered by this permit:

- i. For an operation which is a CAFO on the effective date of the permit, by one year after the effective date of the permit;
- ii. For an operation designated as a CAFO pursuant to 40 CFR 122.23(c), by one year after designation as a CAFO; and
- iii. For an operation which becomes a CAFO after the effective date of the permit, by the date on which the NOI for the CAFO is submitted.

##### b. Submission of BMP Plans for New CAFOs

A permittee for an operation which becomes a CAFO after the effective date of the permit must submit the BMP Plan with the original and the copy of the NOI for that CAFO to the agencies listed in Part III.A, as appropriate.

##### c. Content of BMP Plan

A BMP Plan must:

- i. be developed in accordance with standard engineering practices as defined by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), National Engineering Handbook, Part 651, Agricultural Waste Management Field

Handbook available at <ftp://ftp.ftw.nrcs.usda.gov/pub/awmfh>, or any subsequent NRCS revision of Part 651 which the permittee references in the BMP Plan;

ii. describe the BMPs and Minimum Standards which the permittee will implement to assure compliance with the permit;

iii. demonstrate that the waste water control or retention structures are adequately designed (in accordance with NRCS Conservation Practice Standard Code 313—Waste Storage Facilities or any subsequent NRCS revision of Standard 313 which the permittee references in the BMP Plan) and can achieve the effluent limitations and discharge prohibitions of Part IV.A. above;

iv. identify the persons responsible for developing, implementing, and revising the BMP Plan (including its inspection and record keeping procedures), and describe their respective activities and responsibilities;

v. include a map showing the drainage pattern, surface water bodies, and existing waste water control or retention structures;

vi. list the significant chemicals and/or hazardous substances that are used, stored or disposed of at the CAFO, and describe any significant spills of these chemicals and/or hazardous substances at the CAFO after the effective date of this permit;

vii. describe activities and chemicals and/or hazardous substances which may be a potential pollutant source, including sources which may reasonably be expected to add pollutants to runoff from the facility;

viii. include all existing sampling data obtained pursuant to Part V.B;

ix. describe the inspection and record keeping procedures which the permittee will implement pursuant to Part IV.B.4;

x. describe an appropriate schedule for preventive maintenance and good housekeeping;

xi. identify areas which have a high potential for significant soil erosion and describe measures to limit erosion and pollutant runoff;

xii. describe an employee training program pertaining to permit compliance;

xiii. be signed in accordance with Part V.E.; and

xiv. Be updated as appropriate.

##### 2. Minimum Standards

Minimum Standards are applicable to the CAFO operation upon issuance of the permit and are to be incorporated into the CAFO's BMP Plan.

##### a. Diversion of Run-on

The permittee shall isolate feedlots and associated wastes from outside surface drainage by ditches, dikes, berms, terraces or other waste water control or retention structures, designed to carry, store or contain peak flows during the 25-year, 24-hour storm event. The permittee must protect any waste water control or retention structure by berms or other appropriate structures to prevent inundation that may occur during a 25-year, 24-hour flood event. The permittee should consult with the County Flood Control District in order to ensure that any measures taken to comply with this requirement are consistent with Arizona law.

##### b. Waste Water Control or Retention Structure Freeboard

To maintain adequate capacity in waste water control or retention structures, the permittee shall establish and maintain a minimum freeboard for all waste water control or retention structures adequate to prevent berm failure and overflow during normal operating conditions and to ensure compliance with the permit conditions.

##### c. CAFO Expansion

The permittee shall not expand its CAFO, either in size or number of animals, before making a determination and ensuring that wastes generated by the expansion will not exceed the design capacity of the waste water control or retention structures.

##### d. Land Application of Manure

Manure or process waste water must not be applied on land that is flooded, saturated with water, frozen or snow covered, where such conditions could reasonably be expected to result in a discharge of manure or process waste water to waters of the United States.

##### e. Buffers and Equivalent Practices

The permittee shall maintain buffer strips or other equivalent practices near feedlots, manure storage areas, and land application areas that are sufficient to minimize discharge of pollutants to waters of the United States.

##### f. Chemical Handling

The permittee shall ensure that wastes from facility activities such as dipping and/or pest/parasite control and hazardous substances or toxic pollutants do not enter any waters of the United States.

##### g. Disposal of Material into Waste Water Control or Retention Structures

The disposal of any hazardous substances or toxic pollutants, other

than discharges associated with proper operation and maintenance of the CAFO, into waste water control or retention structures is prohibited.

#### h. Dead Animals

The permittee must dispose of dead animals in a manner that prevents contamination of waters of the United States.

#### i. Spills

The permittee must take appropriate measures to prevent and clean up spills of any pollutants, and to report spills as required by Part VI.D.3.

#### j. Facility Closure

The permittee shall close all waste water control or retention structures in accordance with NRCS Conservation Practice Standard Code 360—Closure of Waste Impoundments or any subsequent NRCS revision of Conservation Practice Standard Code 360 which the permittee references in the BMP Plan.

#### l. Liner Requirements for New Waste Water Control or Retention Structures

Waste water control or retention structures constructed after the effective date of this permit shall incorporate either a synthetic or soil liner in accordance with NRCS Agricultural Waste Management Field Handbook Part 651.1080 Appendix 10D—Geotechnical, Design and Construction Guidelines as posted at <http://www.ncg.nrcs.usda.gov/awmfh.html> or <ftp://ftp.ftw.nrcs.usda.gov/pub/awmfh/> on August 24, 1998, or any subsequent NRCS revision of Part 651.1080 Appendix 10D which the permittee references in the BMP Plan.

### 3. Nutrient Management

#### a. Nutrient Management Plan (NMP)

If manure or process waste water is applied to land under the operational control of the permittee, the permittee shall, no later than (i) two years after the effective date of the permit or (ii) thirty (30) days before beginning land application, whichever is later, develop a Nutrient Management Plan (NMP) approved by Arizona NRCS or a Certified Nutrient Management Planning Specialist. The NMP must provide that waste, process waste water and soil sampling shall be conducted in accordance with the most current version of NRCS Conservation Practice Standard—Arizona Nutrient Management, Code 590.

#### b. On-site Land Application of Manure or Process Waste Water

The permittee shall not land apply manure or process waste water unless

the permittee has completed an NMP and determined a site-specific, quantified land application rate that does not exceed the capacity of the soil and the planned crops to assimilate nutrients based on the most limiting nutrient in the soil (e.g., phosphorus or nitrogen), type of crop, realistic crop yields, soil type, and all nutrient inputs in addition to those from the manure or process waste water. The permittee shall not land apply manure or process waste water in excess of the land application rate which it has determined under the NMP.

#### c. Land Application Monitoring

On each day during which manure or process waste water is land applied by the permittee, the permittee shall record the following information to determine compliance with the land application rate:

- i. Quantity of manure or process waste water applied (in gallons/day, cubic feet/day, or acre-inches/day),
- ii. Land application rate (in tons/acre or lbs/acre of process waste water or manure), and
- iii. Application area (in acres).

#### d. Off-Site Land Application of Manure or Process Waste Water

If the permittee provides manure or process waste water generated at the CAFO to another person for off-site land application, the permittee must:

- i. Provide to the applicer the nutrient values expected to be found in the manure or process waste water;
- ii. Inform the applicer of the requirements of Arizona Administrative Code Title 18, Chapter 9, Article 4, pertaining to Agricultural General Permits (reproduced in Appendix E);
- iii. Record the amount of manure or process waste water that leaves the permitted operation; and
- iv. For quantities greater than 100 tons provided to a single recipient per week, record the name and address of the recipient.

#### 4. Inspections and Record Keeping

a. The permittee shall retain a copy of the NOI, permit, BMP Plan, NMP and other records required to be maintained under the permit at the CAFO.

b. The permittee shall ensure each year that the person or persons identified pursuant to Part IV.B.1.c.iv as responsible for implementing the BMP Plan's inspection and record keeping procedures completely inspects the CAFO and completes a report of the findings of the inspection. The report must state:

- i. Whether the BMP Plan's description of potential pollutant sources is accurate,

ii. If the drainage map shows current conditions or must be updated,

iii. What pollutants have entered the waste water control or retention structures, and

iv. Whether the minimum standards are being implemented and are adequate.

#### c. Waste Water Control or Retention Structure Inspection and Monitoring

i. Monthly (and in any event within five days of each chronic rainfall or catastrophic storm event), the permittee shall inspect the waste water control or retention structures for berm integrity, cracking, slumping, excess vegetation, burrowing animals and seepage.

ii. Quarterly (and in any event within five days of each chronic rainfall or catastrophic storm event), waste water control or retention structure freeboard (in feet) shall be monitored and recorded. Freeboard records shall be kept with the BMP plan.

### Part V. Discharge Notification and Monitoring

#### A. Discharge Notification

The permittee must report any discharge: within 24 hours, by verbal notification to EPA at (415) 744-1905; and, within five (5) days of the discharge, by written notification to EPA and to the State or Indian tribe, as appropriate. The notification must include:

1. A description of the discharge and cause, whether excess precipitation, snow melt, or other specified causes;
2. The date and time of the discharge, its duration and, if not corrected, the anticipated time the discharge is expected to continue;
3. A description of the path to the receiving water and the name of the receiving stream;
4. An estimate of the flow and volume discharged;
5. If the discharge was caused by a precipitation event, information concerning the size of the precipitation event from the National Weather Service or on-site rain gauge;
6. The name of the person recording the discharge; and
7. A description of steps being taken to reduce, eliminate and prevent recurrence of the discharge.

#### B. Discharge Monitoring

The permittee must sample and analyze grab samples from all overflows or discharges from the waste water control or retention structures for the following analytes:

1. Fecal coliform bacteria;
2. 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>);

3. Total Suspended Solids (TSS);
4. ammonia (NH<sub>3</sub>-N); nitrite (as N), nitrates (as N), total Kjeldahl nitrogen (TKN as N); and
5. total phosphorus (as P);

The permittee shall: (a) collect the sample within 30 minutes of commencement of the discharge; or (b) if sampling in that period is inappropriate due to dangerous weather, flooding or other conditions, collect the sample as soon as possible after suitable conditions occur, and document the reason for the delay.

#### *C. Sampling Methods and Procedures*

Within 60 days of commencement of authorization to discharge as provided by Part III.D of this permit, the permittee shall select a licensed Arizona laboratory and inform the laboratory of the analytes to be sampled. The permittee shall obtain the following polyethylene sampling bottles from the laboratory: one 250 ml bottle for bacterial analysis, one 500 ml bottle for BOD<sub>5</sub> and TSS, and one 500 ml bottle for nutrients. These bottles shall be kept ready on-site along with an ice-chest. An on-site source of ice shall be identified for sample preservation. Samples shall be taken as grab samples directly from the end of pipes or from ditches or surface waters. Sample bottles shall not touch solid surfaces during sampling. Sample bottles shall be filled completely, and shall be packed in ice in the ice-chest and delivered to the identified laboratory within six hours of sampling. At the laboratory, the sampler or a designee identified by the sampler in the field log shall sign the 'relinquished by' box on a form which shall be provided by the laboratory. On this form, the sampler or designee shall note date and time when the samples are delivered. The sampler or designee shall inform laboratory of sample type (waste water) and analyses to be performed.

#### *D. Sample Documentation and Transport*

The permittee shall record the following information at the time of the sampling event and shall include the information with the facility's BMP plan pursuant to Part IV.B.1.c.viii of this permit:

1. Sample location and description of discharge;
2. Sampler's name(s);
3. Date and time of sample collection;
4. Date and time that sample arrived at laboratory; and
5. Name of person delivering sample to laboratory.

### **Part VI. 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 Clean Water Act, as amended, (hereinafter known as 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; for permit termination, revocation, and reissuance; for denial of a permit renewal application; and/or for requiring a permittee to apply for and obtain an individual NPDES permit.

##### **3. Toxic Pollutants**

The permittee shall comply with effluent standards and prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

##### **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 stay any 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 required to be kept by this permit.

##### **7. Criminal and Civil Liability**

Nothing in this permit will 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 the 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 will 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/Indian Tribe 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, will not be affected thereby.

#### *B. Proper Operation and Maintenance*

##### **1. Need to Halt or Reduce Activity Not a Defense**

It will 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. Proper operation and maintenance includes the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

### C. Monitoring and Records

#### 1. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect, at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. 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 will 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 and all original strip chart recordings for continuous monitoring instrumentation, 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 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

#### 4. Record 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.

#### 5. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by the Regional

Administrator. The requirements at 40 CFR Part 136 may be accessed at the following web-site: <http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1>

### D. Reporting Requirements

#### 1. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned physical alterations or additions or changes in activity which may result in noncompliance with permit requirements.

#### 2. Transfers

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act (CWA). (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory.)

#### 3. Twenty-Four Hour Reporting

The permittee shall report any noncompliance which may endanger human health or the environment. Any information must be provided orally to the EPA Region IX, via its 24-hour voice mail system, telephone number 415/744-1905 within 24 hours from the time the permittee becomes aware of the noncompliance circumstances. Notice will also be provided to ADEQ or the Tribal Authority, as appropriate. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances.

The report must 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 being taken to reduce, eliminate, and prevent recurrence of the noncompliance.

#### 4. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, the permittee shall promptly submit such facts or information to the Director.

### E. Signatory Requirements

All applications, reports, or information submitted to the Director will be signed and certified consistent with 40 CFR 122.22:

1. All permit applications will 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 or the proprietor, respectively, By the co-permittee (if determined to be operator).

2. All reports required by the permit and other information requested by the Director 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, or position of equivalent responsibility, or an 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 Director.

### 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 fines and imprisonment for knowing violations.

### G. Availability of Reports

Any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

### H. Penalties for Violations of Permit Conditions

#### 1. Criminal Penalties

a. Negligent violations: The Act provides that any person who negligently violates Section 301, 302, 306, 307, 308, 318, or 405 of the Act or any condition or limitation implementing those provisions in a permit issued under Section 402 is subject to a fine of not less than \$2,750 nor more than \$27,500 per day of violation, or by imprisonment for not more than one year, or both.

b. Knowing violations: The Act provides that any person who knowingly violates Section 301, 302, 306, 307, 308, 318 or 405 of the Act or permit conditions implementing those provisions and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than \$275,000, or by imprisonment for not more than 15 years, or both.

c. Knowing endangerment: The Act provides that any person who knowingly violates Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act or permit conditions implementing those provisions and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than \$275,000, or by imprisonment for not more than 15 years, or both.

d. False statements: The Act provides that any person who knowingly makes any false material statement,

representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$11,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$22,000 per day of violation, or by imprisonment of not more than four years, or by both. (See Section 309(c)4 of the Clean Water Act)

#### 2. Civil Penalties

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed \$27,500 per day for each violation. (See Section 309(d))

#### 3. Administrative Penalties

The Act provides that the Administrator may assess a Class I or Class II administrative penalty if the Administrator finds that a person has violated Sections 301, 302, 306, 307, 308, 318, or 405 of the Act or a permit condition or limitation implementing these provisions, as follows (See Section 309(g))

- a. Class I penalty: Not to exceed \$11,000 per violation nor shall the maximum amount exceed \$27,500.
- b. Class II penalty: Not to exceed \$11,000 per day for each day during which the violation continues nor shall the maximum amount exceed \$137,500.

#### I. Upset

##### 1. Definition

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with Part IV.A.1 of this permit because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

##### 2. Effect of an Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with Part IV.A.1 of this permit if the requirements of Part VI.I.3 of this permit are met. No determination made during administrative review of

claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

#### 3. Conditions Necessary for a Demonstration of Upset

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (ii) The permitted facility was at the time being properly operated;
- (iii) The permittee submitted notice of the upset as required in Part V.A of this permit (24-hour notice); and
- (iv) The permittee complied with any remedial measures required under Part VI.B.2 of this permit.

#### 4. Burden of Proof

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

### Part VII. Definitions

#### A. 25-Year, 24-Hour Storm Event

Means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom. A current map showing the 25-year, 24-hour precipitation event may be viewed at the following website: <http://www.wrcc.dri.edu/pcpnfreq/az25y24.gif>, which is maintained by the Western Regional Climate Center, accessible through the Homepage for the Hydrometeorological Design Studies Center, part of the National Weather Service's Office of Hydrology.

#### B. Animal Feeding Operation

Is defined at 40 CFR 122.23(b) as: "(1)\* \* \* a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (2) Two or more animal feeding operations under common ownership are considered, for the purposes of these

regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.”

#### C. Application

Means a written “notice of intent” pursuant to 40 CFR 122.28.

#### D. Best Management Practices (“BMPs”)

Means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. Best Management Practices also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

#### E. Catastrophic Storm Event

Is equivalent to a 25-year, 24-hour storm event. Catastrophic events include tornadoes, hurricanes or other catastrophic conditions that would cause an overflow from a waste water control or retention structure that is designed, constructed, operated and maintained to meet all the requirements of this permit.

#### F. Certified Nutrient Management Planning Specialist

Is a person, including a CAFO operator or other third party vendor, who has completed the following training and who has received approval by the Natural Resources Conservation Service (NRCS) as a “Certified Nutrient Management Planning Specialist.” A Certified Nutrient Management Planning Specialist has the authority to plan or approve Nutrient Management Plans (NMPs) under this permit.

1. The following NRCS web-based classes, located at <http://www.ftw.nrcs.usda.gov/nedc/homepage.html>, must have been completed and passed by a person training to be a Certified Nutrient Management Planning Specialist prior to that person undertaking the training described in subsection 2 below:

- a. “Introduction to Water Quality”,
- b. “Nutrient Management Considerations in Conservation Planning”, and
- c. “Agricultural Waste Management Systems—A Primer”.

2. The following NRCS-Arizona 1-day Nutrient Management Training Course must have been completed and passed by a person training to be a Certified Nutrient Management Planning Specialist prior to that person being eligible to obtain approval by the NRCS

as a Certified Nutrient Management Planning Specialist:

- a. Conservation Planning Course Modules 1–5,
- b. Federal Regulations,
- c. Arizona Regulations, and
- d. “Arizona Nutrient Management Considerations in Conservation Planning”.

#### G. Chronic Rainfall

Is a series of wet weather conditions that preclude de-watering of properly maintained waste water control or retention structures.

#### H. Concentrated Animal Feeding Operation (CAFO)

Is defined at 40 CFR 122.23(b) to mean an animal feeding operation which meets the criteria in appendix B of 40 CFR 122, or which the Director so designates. Appendix B to Part 122-Criteria for Determining a Concentrated Animal Feeding Operation (122.23) states that: “An animal feeding operation is a concentrated animal feeding operation for purposes of 122.23 if either of the following criteria are met.

(a) More than the numbers of animals specified in any of the following categories are confined:

- (1) 1,000 slaughter and feeder cattle,
- (2) 700 mature dairy cattle (whether milked or dry cows),
- (3) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),
- (4) 500 horses,
- (5) 10,000 sheep or lambs,
- (6) 55,000 turkeys,
- (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering),
- (8) 30,000 laying hens or broilers (if the facility has a liquid manure system),
- (9) 5,000 ducks, or
- (10) 1,000 animal units; or
- (b) More than the following number and types of animals are confined:
  - (1) 300 slaughter and feeder cattle,
  - (2) 200 mature dairy cattle (whether milked or dry cows),
  - (3) 750 swine each weighing over 25 kilograms (approximately 55 pounds),
  - (4) 150 horses,
  - (5) 3,000 sheep or lambs,
  - (6) 16,500 turkeys,
  - (7) 30,000 laying hens or broilers (if the facility has continuous overflow watering),
  - (8) 9,000 laying hens or broilers (if the facility has a liquid manure system),
  - (9) 1,500 ducks, or
  - (10) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar man-made

device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24-hour storm event.”

#### I. Discharge

Means the “discharge of a pollutant”.

#### J. Discharge of a Pollutant

Means any addition of any pollutant or combination of pollutants to waters of the United States from any point source. This definition includes additions of pollutants into waters of the United States from: surface water runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works. [See, 40 CFR 122.2.]

#### K. Effective Date of the Permit

Is August 27, 2001.

#### L. Feedlot

Means a concentrated, confined animal or poultry growing operation for meat, milk, or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth or production is not sustained in the area of confinement.

#### M. Freeboard

Means the linear distance in feet from the structural top of a berm (usually defined by a road or access path) to the operational level of waste water in a retention structure.

#### N. Ground Water

Means any subsurface waters.

#### O. Hazardous Substance

Means any substance designated under 40 CFR Part 116 pursuant to section 311 of the Act. A list of currently designated hazardous substances is included in 40 CFR 116.4, Table 116.4A. 40 CFR 116.4 may be obtained at the following web-site: <http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1>, by entering the following numbers: Title 40, Part 116, and Section 4 for the “most recent available” revision year. Alternatively, a

paper copy of 40 CFR 116.4, Table 116.4A may be obtained by contacting U.S. EPA Region 9's CWA Standards and Permits Office at (415) 744-1898 or (415) 744-1922.

#### *P. Hydrologic Connection*

Means a discrete connection between groundwater and surface water, e.g. percolation from a waste impoundment or improper land application resulting in down-gradient seepage into waters of the United States.

#### *Q. Land Application*

Means the application of process waste water or waste onto or incorporation into the soil.

#### *R. Manure*

Means animal waste.

#### *S. New Source*

Means the following as defined under 40 CFR 122.29 (b)(1):

“(i) It is constructed at a site at which no other source is located; or (ii) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or (iii) Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.”

#### *T. Nutrient Management Plan (NMP)*

Means a plan, approved by Natural Resources Conservation Service (NRCS) or a Certified Nutrient Management Planning Specialist, which, among other elements, establishes the rates at which manure or process waste water can be land applied so as to meet crop nutrient needs while minimizing the amount of pollutants discharged in agricultural return flows. The requirements for NMPs have been established by NRCS under the NRCS Conservation Practice Standard—Arizona Nutrient Management, Code 590. An NMP must contain the following minimum information: a Field Map, Soil Test Results, Crop Sequence, Realistic Yield Goals, Manure and Waste Water Nutrient Values, Recommended Application Rates, Recommended Application Methods, and Guidance for implementation, operation, maintenance and record keeping.

#### *U. Pollutant*

Means the following as defined under 40 CFR 122.2: “dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials \* \* \*, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

#### *V. Process Waste Water*

Means any process generated waste water; and any precipitation (e.g., rain or snow) which comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

#### *W. Process Generated Waste Water*

Means water directly or indirectly used in the operation of a feedlot 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 feedlot facilities; direct contact swimming, washing or spray cooling of animals; and dust control.

#### *X. Spill*

Means discharge, usually (but not exclusively) a small, inadvertent discharge of a toxic pollutant or hazardous substance.

#### *Y. The Act*

Means Federal Water Pollution Control Act as amended, also known as the Clean Water Act, found at 33 U.S.C. 1251 *et seq.*

#### *Z. Toxic Pollutants*

Means any pollutant listed as toxic under Section 307(a)(1) of the Act. Toxic pollutants are listed in 40 CFR 401.15, which may be obtained at the following web-site: <http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1> by entering the following numbers: Title 40, Part 401, and Section 15 for the “most recent available” revision year. Alternatively, a paper copy of 40 CFR 401.15 may be obtained by contacting U.S. EPA Region 9's CWA Standards and Permits Office at (415) 744-1898 or (415) 744-1922.

#### *AA. Waste*

Means manure as well as bedding, feed and other by-products of an animal feeding operation.

#### *BB. Waste Water Control or Retention Structure*

Means any structure such as a pond, impoundment or lagoon used for the retention of liquid wastes or sludges (including manure, liquid waste, and runoff from the feedlot area) on the premises until their ultimate disposal. This includes all collection ditches, conduits and swales for the collection of runoff and waste water.

#### *CC. Water Quality Limited Segment*

Means a water body identified as Water Quality Limited Segment pursuant to 40 CFR 130.7. At the time of permit issuance the most recent list of water quality limited waters in Arizona may be found in: “Arizona's 1998 Water Quality Limited Waters List,” ADEQ, July 1998, EQR-98-8.

#### *DD. Water Quality Standard*

Is defined at 40 CFR 130.2(d) as: “Provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.” The State of Arizona's water quality standards are contained in Arizona Administrative Code Title 18 (Environmental Quality) Chapter 11 (Department of Environmental Quality Water Quality Standards) Article 1 (Water Quality Standards for Surface Waters). The website where they may be found is: [http://www.sosaz.com/public\\_services/Title\\_18/18-11.htm](http://www.sosaz.com/public_services/Title_18/18-11.htm).

#### *EE. Waters of the United States*

Is defined at 40 CFR 122.2 as: “(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (b) All interstate waters, including interstate “wetlands;” (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes; (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (3) Which are used or could be used for industrial purposes by industries in interstate commerce; (d) All impoundments of waters otherwise

defined as waters of the United States under this definition; (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition; (f) The territorial sea; and (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

\* \* \*

### Part VIII. Availability of Technical and Legal References

Hard copies or electronic versions of all citations and technical or other documents referenced in this permit may be obtained by contacting Shirin Tolle at (415) 744-1898 or Jacques Landy at (415) 744-1922.

[FR Doc. 01-18193 Filed 7-20-01; 8:45 am]

BILLING CODE 6560-60-P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; Comments Requested

July 13, 2001.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before September 21, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A-804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

#### SUPPLEMENTARY INFORMATION:

*OMB Approval No.:* 3060-0661.

*Title:* Section 21.931 Partitioning of BTAs.

*Form No.:* n/a.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 10.

*Estimated Hours Per Response:* 7 hours (1 hour respondent, 4 hours contract attorney, 2 hours contract engineer).

*Frequency of Response:* on occasion.

*Cost to Respondents:* \$11,000.

*Estimated Total Annual Burden:* 10.

*Needs and Uses:* Section 21.931 permits a Basic Trading Area (BTA) to enter into contracts with eligible parties to partition any contiguous portion of its service area. Under Section 21.931(a)(2), applicants are required to submit partitioning contracts with the Commission within 30 days of the date the contracts are reached. These contracts will be submitted with one of the following: (1) An MDS long-form application; (2) an application for assignment or transfer; or (3) a statement of intention. These collections have separate OMB control numbers. These partitioning contracts will facilitate the development of successful wireless cable systems in rural areas and will make the most efficient use of the available spectrum. The contracts designate the specific geopolitical boundaries used to partition the BTA. The Commission will apply the same MDS technical rules to partitioned service areas.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 01-18293 Filed 7-20-01; 8:45 am]

BILLING CODE 6712-01-U

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 16, 2001.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before August 22, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202-418-0214 or via the Internet at jboley@fcc.gov.

#### SUPPLEMENTARY INFORMATION:

*OMB Control No.:* 3060-0788.