



FREQUENTLY ASKED QUESTIONS

Delaware's Confined Animal Feeding Operations (CAFO) Regulations

Basic Information

JULY 2010

What is a Confined Animal Feeding Operation (CAFO)?

A CAFO is an animal feeding operation (AFO) where animals have been, are, or will be stabled or confined and fed, or maintained for a total of 45 days or more (can be non-consecutive) in any 12 month period. In addition, the confined areas do not sustain crops, vegetation, or forage growth, and post harvest residues are not sustained in the normal growing season.

Only livestock and poultry operations may be CAFOs, unless otherwise designated by the Secretary of Agriculture.

What is a NPDES CAFO permit?

A NPDES CAFO permit is a National Pollutant Discharge Elimination System (NPDES) point source permit authorized by the federal Clean Water Act.

A Concentrated Animal Feed Operation (CAFO) permit is required by federal regulation for CAFO operations that discharge pollution into public waters known as "waters of the state," including streams or drainage ditches.

Pollutants are described as any substance which causes or contributes to the degradation of water or soil resources. This includes stormwater that comes in contact with manure, feathers or dust in the production

area, or the area where buildings contain animals, manure, compost and feed.

What are "Waters of the State"?

"Waters of the State" means all water on the surface and in the ground, completely or partially within the borders of Delaware or within the state's jurisdiction. These include: tidal waters; bays; estuaries; the Atlantic Ocean; interstate waters and wetlands; lakes; rivers; streams (perennial, intermittent, and ephemeral); drainage ditches and tax ditches; creeks; mudflats; sand flats; wetlands; sloughs; or natural or impounded ponds; wetlands adjacent to waters; and all impoundments of waters. Waste and stormwater treatment systems are not waters of the state.

Is there more than one category of CAFO?

Delaware and the federal regulations only recognize three categories of CAFO's: large, medium and designated. Some states also regulate small CAFOs.

When is an operation considered a large CAFO and what are the permit requirements?

An operation is classified as a large CAFO if the operation supports the following number of livestock or poultry:

<u>Number of Animals</u>	<u>Livestock species</u>
1,000	Cattle other than mature dairy cows or veal calves. Includes but is not limited to heifers, steers, bulls, and cow/calf pairs
700	Mature Dairy Cattle (whether milked or dry cows),
2,500	Swine each weighing over 55 pounds
10,000	Swine weighing under 55 pounds
500	Horses
10,000	Sheep or Lambs
55,000	Turkeys
30,000	Laying Hens or Broilers, if the AFO uses a liquid manure handling system
125,000	Chickens except laying hens (if other than a liquid manure handling system)
82,000	Laying hens (if other than a liquid manure handling system)
1,000	Veal calves
30,000	Ducks (if the AFO uses other than a liquid manure handling system)
5,000	Ducks (if the AFO uses a liquid manure handling system)

All large CAFOs are required to apply for a NPDES CAFO permit by submitting a Notice of Intent if they discharge pollutants from their operation, from handling mortalities into waters of the state or propose to discharge pollutants into waters of the state because of the design, construction, operation, or maintenance of the CAFO.

What operation is considered a medium CAFO and what are the permit requirements?

An operation is classified as a medium CAFO if the operation discharges or proposes to discharge pollutants into waters of the state from the operation, from handling mortalities, or as a result of the design, construction,

operation or maintenance AND the operation supports the following number of livestock or poultry:

<u>Number of Animals</u>	<u>Livestock species</u>
300 to 999	Cattle other than mature dairy cows or veal calves. Includes but is not limited to heifers, steers, bulls, and cow/calf pairs
200 to 699	Mature Dairy Cattle (whether milked or dry cows)
750 to 2,499	Swine each weighing over 55 pounds
3,000 to 9,999	Swine weighing under 55 pounds
150 to 499	Horses
3,000 to 9,999	Sheep or Lambs
16,500 to 54,999	Turkeys
9,000 to 29,999	Laying hens or broilers, if the AFO uses a liquid manure handling system
37,500 to 124,999	Chickens except laying hens (if other than a liquid manure handling system)
25,000 to 81,999	Laying hens (if other than a liquid manure handling system)
300-999	Veal Calves
10,000 to 29,999	Ducks (if the AFO uses other than a liquid manure handling system)
1,500 to 4,999	Ducks (if the AFO uses a liquid manure handling system)

Medium CAFOs are required to apply for a NPDES CAFO permit by submitting a Notice of Intent if they discharge pollutants from their operation or from handling of mortalities into waters of the state or propose to discharge pollutants into waters of the state because of the design, construction, operation, or maintenance of the CAFO.

What is a Designated CAFO?

An AFO may be designated as a CAFO by the Secretary of Agriculture with agreement by the Delaware Nutrient Management Commission, after determining the operation is a significant contributor of pollutants to waters of the state.

The following conditions will be considered for determining a Designated CAFO:

- The size of the operation and the amount of pollutants reaching waters of the state;
- The location of the operation relative to waters of the state;
- The means of conveyance of animal manure, litter or process wastewaters into waters of the state;
- The slope, vegetation and other factors affecting the likelihood or frequency of discharge of manure, litter or process wastewaters into waters of the state; or
- Other relevant factors at the discretion of the Secretary of Agriculture.

The Secretary of Agriculture must conduct an on-site inspection of the operation prior to designating an operation as a CAFO. An AFO may not be designated if the operation supports less livestock or poultry than required of a medium CAFO unless:

- Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
- Pollutants are discharged directly into Waters of the State which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

An operation will be notified in writing by the Secretary of Agriculture if they are to be designated as a CAFO.

If an operation is designated as a CAFO by the Secretary of Agriculture, the operation becomes

subject to the NPDES CAFO permit regulations and requirements.

What if my production area joins with another CAFO? Is that considered one CAFO?

Two or more Animal Feeding Operations (AFOs) under common ownership are considered to be a single AFO when determining the number of animals in an operation, if the production areas adjoin each other or if the AFOs use a common area or system for the disposal of manure or wastes.

What farm specific requirements are required by CAFO regulations?

The following farm specific practices are required by a NPDES CAFO permit:

- Adequate storage of manure as defined by at least four months of storage. For most poultry farms, a six month storage system is designed by the Conservation Districts and is ideal for flexibility in manure management.
- Proper mortality management such as composting or other means that protect surface or ground water. In general, any mortality management under roof is acceptable and burial of mortalities is not acceptable.
- Clean water management and conservation practices within the production area are very site-specific and dependent on the drainage systems of the farm. All manure should be protected from stormwater. Incidental manure, feathers and dust should be treated with vegetative buffers and other common practices.
- Manure application according to the recommendations in the nutrient

management plan. Specific application requirements apply to farms that generate manure under a NPDES CAFO permit and utilize the manure for crop production under the NPDES CAFO permit. When applying around ditches, streams and other sensitive waters, practices such as application setbacks, vegetative buffers or cover crops are required. Manure storage shed to keep manure under cover and concrete pads to assist in sweeping up spilled manure.

How do I know if I need to file for a NPDES CAFO permit?

The owner or operator of any CAFO that discharges pollutants or proposes to discharge pollutants is required to seek a NPDES CAFO permit. Discharges of pollutants are not limited to just manure nutrients because the Clean Water Act and the NPDES Program prohibit the discharge of “any pollutant” from a point source.

If the CAFO is designed, constructed, operated, or maintained in a way that a discharge will occur, a CAFO owner or operator proposes to discharge pollutants.

The owner or operator of an operation is responsible for self-evaluating their operation production area and land application areas to determine if a discharge exists or if they will be

proposing to discharge to waters of the state based on the design, construction, operation or maintenance of the operation.

The Nutrient Management Program can provide a self assessment/risk assessment tool to assist the CAFO owner or operator in making a determination of discharge.

EPA has also developed a list of factors to be considered in an objective assessment (see below). The objective assessment should take into account manmade, climatic, hydrologic, topographic, and other characteristics beyond the operator’s control that affect whether the CAFO will discharge given the design, construction, operation or maintenance. All possible sources of pollutants should also be considered, such as animal confinement areas; feed storage areas; manure, litter and process wastewater storage areas; and other site specific sources of pollutants as well as any pathways for pollutants from the CAFO to reach waters of the state. In addition, EPA has developed a document “*Implementation Guidance on CAFO Regulations – CAFOs that Discharge or are Proposing to Discharge*” (May 28, 2010). This document is available on EPA’s website at http://www.epa.gov/npdes/pubs/cafo_implementation_guidance.pdf.

Examples of Factors to be Considered in Assessing Whether a CAFO Discharges or Proposes to Discharge (Provided by EPA)

ALL ANIMAL SECTORS

- Facility location, such as whether in a floodplain, slope, and proximity to waters of the U.S.
- Volume of manure, litter, or process wastewater generated
- Waste storage system and if designed, constructed, operated and maintained such that a discharge into a water of the U.S. will occur
- Management of storage, treatment and disposal of mortalities
- Amount of acreage to land-apply manure, litter, or process wastewater in accordance with

- appropriate practices and/or arrangements for disposing of or other means of utilizing nutrients, such as transfer off-site
- Type and collective effect of conservation practices, e.g., setbacks and buffers, employed near surface waters, ditches, and other conduits to surface waters to control the runoff of pollutants from land application areas
- Resources and protocols for proper operation and maintenance at all times of land application equipment, e.g., inspecting hoses and overseeing automatic shut-off valves

- Management of feed and silage, including management/capture of silage leachate and runoff from feed and silage storage areas

DAIRY SECTOR

- Whether animals are housed under roofs at all times, and if not, management of manure and wastewater generated in loafing areas and other outdoor areas with animal access
- Management of the calving area
- Management of cooling water and footbath water
- Storage or disposal of production area waste, including from milking parlors
- Management of bedding material

BEEF CATTLE SECTOR

- The capacity for manure and wastewater storage, including consideration of proper siting and management of stockpiles and capacity of solid settling basins to hold direct precipitation
- The capacity, siting, and operation and maintenance practices for a vegetated treatment system, where applicable
- Management of manure composting areas
- Cattle access to surface water

SWINE SECTOR

- Management of pollutants from confinement houses, including consideration of type of confinement houses, pollutants expelled and deposited outside of and around confinement houses from the ventilation system, and design of any drainage features that may relate to management of process wastewater at the CAFO

(i.e., whether a conveyance routes water through part of the CAFO and into a water of the United States)

- How manure and wastewater is collected and stored, such as in a deep pit under the confinement house or by a containment structure like a lagoon
- Identification of sources of pollutants, such as storage facilities and confinement house ventilation systems, and consideration of whether pollutants come into contact with precipitation or other water to generate process wastewater

POULTRY SECTOR

- Management of pollutants from confinement houses, including consideration of type of confinement houses, pollutants expelled and deposited outside of and around confinement houses from the ventilation system, and design of any drainage features that may relate to management of process wastewater at the CAFO (i.e., whether a conveyance routes water through part of the CAFO and into a water of the United States)
- Identification of sources of pollutants, such as storage facilities, litter handling activities (e.g., cake-outs, crust-outs, whole house clean-outs, etc.), poultry handling, and confinement house ventilation systems, and consideration of whether pollutants come into contact with precipitation or other water to generate process wastewater

For more information or to obtain a copy of the

Proposed CAFO Regulations go to:

The Delaware Department of Agriculture online at <http://DDA.Delaware.gov> or contact the Delaware Nutrient Management Program at 302-698-4500.



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Permit Process

JULY 2010

Why should I get a NPDES CAFO permit?

Animal operations which meet the definition of a CAFO, and discharge pollutants to waters of the state or propose to discharge pollutants to waters of the state as a result of the actual design, construction, operation or maintenance of the operation are considered point sources and are required by the Clean Water Act to obtain a NPDES CAFO permit.

A NPDES CAFO permit demonstrates (documents) that a farm is using best management practices (BMP) and is working to protect the environment from the discharge of pollution. Compliance with a NPDES CAFO permit and all the terms of the permit provides protection against action by the state and federal governments as well as protection against citizen suits under the Federal Act if a discharge should occur. If a farm complies with a NPDES CAFO permit and implements associated BMPs, even if a discharge occurs, the farm is in compliance with State and Federal regulations.

What could happen if I don't have a NPDES CAFO permit?

If an operation that meets the definition of a CAFO but does not have a NPDES CAFO permit and a discharge of a "pollutant" occurs,

enforcement action including penalties may be incurred.

How long does it take to get a NPDES CAFO permit?

The permit application process will take a minimum of 60 days for approval after the complete NOI application is submitted. Additional time will be required if a public hearing becomes necessary or other unforeseen issues.

Is there a fee to obtain a NPDES CAFO permit?

There are no State or Federal fees to obtain or renew a permit and there are no yearly fees to maintain NPDES CAFO permit coverage.

What do I need to do first to apply for a NPDES CAFO permit?

CAFO owners or operators need to submit a Notice of Intent (NOI) on the prescribed form to the Department of Agriculture within 90 calendar days of the effective date of the CAFO regulations. Additional scenarios that would require a farm to submit a NOI for NPDES CAFO permit coverage include:

- Newly constructed CAFOs not subject to effluent guidelines and new sources shall submit a NOI at least 180 days prior to commencement of operations or as assigned by the Secretary.
- Expanded CAFOs that become a CAFO as a result of the expansion shall submit a NOI within 90 days of meeting the definition as a CAFO.
- CAFO owners or operators shall submit a NOI within 90 days of being designated as a CAFO in accordance with the CAFO regulations.

What is a NOI – Notice of Intent?

Applicants for a NPDES CAFO permit should first complete a NOI application form, available on the Nutrient Management Program website and submit it to the Delaware Nutrient Management Program. A complete nutrient management plan (or animal waste management plan) must be submitted with their application.

A NOI is a written commitment by the applicant to comply with the CAFO regulations.

An NOI must include:

- Owner/Operator contact information
- Copy of the Nutrient Management/Animal Waste Management Plan
- Annual operation data for CAFO
- Number and type of animals
- Estimated annual manure generation
- Manure storage system and capacity
- Animal mortality system
- Acreage information

When must a farm submit an application (NOI) for a NPDES CAFO permit?

Delaware's revised CAFO regulations are expected to become effective as of October 11, 2010. All current NPDES CAFO permits expire on September 11, 2010. Farm operators will have

90 days to file for a NPDES CAFO permit from October 11, 2010. All current permit holders and any AFO that meets the requirements or wishes to apply for a permit must do so between October 11, 2010 and January 11, 2011. A schedule for completing the nutrient management plans that must be submitted with the application will be sent to current permit holders along with other information and posted on the Nutrient Management Program website at http://www.dda.delaware.gov/nutrients/nm_CAF0.shtml.

Permits are in effect for up to five years. CAFO owners or operators will need to submit a new application 180 days prior to the expiration of their permits. Therefore, if owners or operators are issued a new permit (after October 11, 2010) for five years, owners or operators will need to submit a new NOI in four and a-half years.

If owners or operators expand their operation to the extent that it is defined as a CAFO, owners or operators must submit an NOI within 90 days.

If owners or operators build a new medium CAFO or operate a new source or pollutants then owners or operators must submit an NOI 180 days before starting operations of the new facility.

How is the NOI reviewed and approved?

What is the process?

NOIs are subject to a public review process. After a complete application is received by the Nutrient Management Program, a permit will be drafted. The Secretary of Agriculture may request additional information or changes to be made to the Nutrient Management Plan if

necessary. Then the NOI, supporting documents, and draft permit will be made available to the public for review and comment for a period not less than 30 days. A notice will appear in the newspaper and on the Delaware Nutrient Management website, stating that the application, draft permit and supporting documents are available. If there are no significant changes as a result of the public review period, then the Secretary will approve the permit. The Secretary must respond to each comment received by the public. A public hearing may be held if the Secretary of Agriculture determines that a public hearing is in the public interest or if a written meritorious objection to the application is submitted by the public.

If substantial revisions to the NOI are needed, the review and public comment process will need to be repeated. The public will be notified when NPDES CAFO permits are approved. The approved NOI, including the Nutrient Management Plan and permit terms will be available for review by the public at the Delaware Department of Agriculture.

The CAFO owner or operator will receive notice from the Secretary of Agriculture upon approval of a NPDES CAFO permit.

When will my NPDES CAFO permit coverage be in effect?

A NPDES CAFO permit becomes effective when it is approved by the Secretary of Agriculture.

For how long is a NPDES CAFO permit effective?

NPDES CAFO permits may be issued for up to five years. A NPDES CAFO permit may be reissued for a period of less than five years,

modified, revoked, or terminated if a permittee fails to comply with the NPDES CAFO permit or state and federal regulations.

What information must be included in the Nutrient Management Plan and the Animal Waste Management Plan for the production area and the application area of an operation?

- CAFO identification information, acreage, and consultant certification.
- Maps and photography identifying fields, soils, surface waters and irrigation systems.
- Crop and Nutrient Information in accordance with State Technical Standards including:

Animal types and quantities; estimate of amount of manure, litter or process wastewater generated; storage methods for manure, including stockpiling in the production area and/or staging in the land application area; summary of the amount of nutrients needed by the operation; realistic yield goals; soil test results; current and planned crop rotation; nutrient application rates by field, sources of nutrients, and anticipated timing of applications; analysis of manure, litter and process wastewater; etc.

- Description of best management practices to be implemented and in place in the production area and the land application area including:

Manure balance budget; description of manure storage capacity and fate of manure; management practices to prevent leakage of pollutants to ground or surface water; emergency procedures; adequate storage methods; segregation plan for clean water; mortality management plan; conservation practices to control nutrient loss; application setbacks.

What are the recordkeeping requirements for permitted CAFOs?

- Records must be maintained on site for 6 years.
- Records must be available for inspection at the request of the Secretary.
- The following documents must be maintained and made available:
 - The Nutrient Management Plan or Animal Waste Management Plan
 - Annual Report
 - Records of implementation for the production area
 - Records of implementation for the land application area
 - Additional records depending on the type and size of the operation

What records of implementation are required of permitted CAFOs?

Two types of records of implementation are required – production area records and land application area records.

Production Area Records include:

- Mortality management, including the number of disposed animals and method.

- Manure storage activities, including length stored, amount stored, and maintenance of stored facilities.
- Deficiencies and corrective actions taken.

Land Application Area Records include:

- Test and analysis results for soil, manure, litter and process wastewater; methods of testing.
- Recommended nutrient application rates and explanation of basis for determining rates. Quantities, analysis and sources of all nutrients applied to fields.
- Dates of nutrient application, methods of applications, and weather conditions 24 hours before and after application and day of application.
- Crops planted, yields, and plant matter (grain, silage) removed from the fields. Records indicating periodic inspections and maintenance of land application equipment for leaks.
- Deficiencies and corrective actions taken.
- On-site use of manure, litter or process wastewater, including date of removal, contact information for receiver, quantity removed, and most recent manure nutrient analysis.

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