

## Title 33 ENVIRONMENTAL QUALITY

### Part IX. Water Quality

#### Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

#### Chapter 25. Permit Application and Special LPDES Program Requirements

##### §2505. Concentrated Animal Feeding Operations (CAFO)

A. Permit Requirement for CAFOs. *Concentrated animal feeding operations (CAFO)*, as defined in Subsection B of this Section or designated in accordance with Subsection C of this Section, are point sources, subject to LPDES permitting requirements as provided in this Chapter. Once an animal feeding operation is defined as a CAFO for at least one type of animal, the LPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

B. – C.3.b. ...

D. Who must shall seek coverage under an LPDES permit?

1. The owner or operator of a CAFO must shall seek coverage under an LPDES permit if the CAFO discharges ~~or proposes to discharge~~ a regulated wastewater. ~~A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge of regulated wastewater will occur.~~ Specifically, the CAFO owner or operator must shall either apply for an individual LPDES permit or submit a notice of intent for coverage under an LPDES general permit. If the state administrative authority has not made a general permit available to the CAFO, the CAFO owner or operator must shall submit an application for an individual permit to the state administrative authority.

2. Information to Submit with Permit Application or Notice of Intent. An application for an individual permit must shall include the information specified in LAC 33:IX.2501. A notice of intent for a general permit must shall include the information specified in LAC 33:IX.2501 and 2515.

E. – E.2. ...

F. By when shall the owner or operator of a CAFO have an NPDES permit if it discharges?

1. A CAFO shall be covered by a permit at the time that it discharges. ~~When must the owner or operator of a CAFO seek coverage under an LPDES permit? Any CAFO~~

~~that is required to seek permit coverage under Paragraph D.1 of this Section must seek coverage when the CAFO proposes to discharge, unless a later deadline is specified as follows.~~

~~1. Operations Defined as CAFOs Prior to April 14, 2003. For operations defined as CAFOs under regulations that were in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under an LPDES permit as of April 14, 2003, and comply with all applicable LPDES requirements, including the duty to maintain permit coverage in accordance with Subsection G of this Section.~~

~~2. Operations Defined as CAFOs as of April 14, 2003, That Were Not Defined as CAFOs Prior to That Date. For all operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, the owner or operator of the CAFO must seek to obtain coverage under an LPDES permit by February 27, 2009.~~

~~3. Operations That Become Defined as CAFOs After April 14, 2003, but Which Are Not New Sources. For a newly constructed CAFO or AFO that makes changes to its operations that result in its becoming defined as a CAFO for the first time after April 14, 2003, but that is not a new source, the owner or operator must seek to obtain coverage under an LPDES permit, as follows:~~

~~a. for newly constructed operations not subject to effluent limitations guidelines, within 180 days prior to the time the CAFO commences operation;~~

~~b. for other operations (e.g., resulting from an increase in the number of animals), as soon as possible, but no later than 90 days after becoming defined as a CAFO; or~~

~~c. if an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until February 27, 2009, or 90 days after becoming defined as a CAFO, whichever is later, to seek coverage under an LPDES permit.~~

~~4. New Sources. The owner or operator of a new source must seek to obtain coverage under an LPDES permit at least 180 days prior to the time that the CAFO commences operation.~~

~~5. Operations That Are Designated as CAFOs. For operations designated as a CAFO in accordance with Subsection C of this Section, the owner or operator must seek to obtain coverage under an LPDES permit no later than 90 days after receiving notice of the designation.~~

~~G. Reserved Duty to Maintain Permit Coverage. No later than 180 days before the expiration of the permit, or as provided by the state administrative authority, any permitted CAFO must submit an application to renew its permit, in accordance with LAC 33:IX.2501.D, unless the CAFO will not discharge or propose to discharge upon expiration of the permit.~~

H. – H.2. ...

I. No Discharge Certification Option

~~1. The owner or operator of a CAFO that meets the eligibility criteria in Paragraph I.2 of this Section may certify to the state administrative authority that the CAFO does not discharge or propose to discharge. A CAFO owner or operator who certifies that the CAFO does not discharge, or propose to discharge, manure, litter, or process wastewater is not required to seek coverage under an LPDES permit pursuant to Paragraph D.1 of this Section, provided that the CAFO is designed, constructed, operated, and maintained in accordance with the requirements of Paragraphs I.2 and 3 of this Section, and subject to the limitations in Paragraph I.4 of this Section.~~

~~2. Eligibility Criteria. In order to certify that a CAFO does not discharge or propose to discharge, the owner or operator of a CAFO must document, based on an objective assessment of the conditions at the CAFO, that the CAFO is designed, constructed, operated, and maintained in a manner such that the CAFO will not discharge, as follows:~~

~~a. the CAFO's production area is designed, constructed, operated, and maintained so as not to discharge. The CAFO must maintain documentation that demonstrates that:~~

~~i. any open manure storage structures are designed, constructed, operated, and maintained to achieve no discharge based on a technical evaluation in accordance with the elements of the technical evaluation set forth in 40 CFR 412.46(a)(1)(i) (viii);~~

~~ii. any part of the CAFO's production area that is not addressed by Clause I.2.a.i of this Section is designed, constructed, operated, and maintained such that there will be no discharge of manure, litter, or process wastewater; and~~

~~iii. the CAFO implements the additional measures set forth in 40 CFR 412.37(a) and (b);~~

~~b. the CAFO has developed and is implementing an up to date nutrient management plan to ensure no discharge from the CAFO, including from all land application areas under the control of the CAFO, that addresses, at a minimum, the following:~~

~~i. the elements of LAC 33:IX.2703.E.1.a i and 40 CFR 412.37(e); and~~

~~ii. all site specific operation and maintenance practices necessary to ensure no discharge, including any practices or conditions established by a technical evaluation pursuant to Clause I.2.a.i of this Section; and~~

~~c. the CAFO will maintain documentation required by this Paragraph either on site or at a nearby office, or otherwise make such documentation readily available to the state administrative authority upon request.~~

~~3. Submission to the State Administrative Authority. In order to certify that a CAFO does not discharge or propose to discharge, the CAFO owner or operator must complete and submit to the state administrative authority, by certified mail or an equivalent method of documentation, a~~

~~certification that includes, at a minimum, the following information:~~

~~a. the legal name, address, and phone number of the CAFO owner or operator (see LAC 33:IX.2501.B);~~

~~b. the CAFO name and address, the county name, and the latitude and longitude where the CAFO is located;~~

~~c. a statement that describes the basis for the CAFO's certification that it satisfies the eligibility requirements identified in Paragraph I.2 of this Section; and~~

~~d. the following certification statement, signed in accordance with the signatory requirements of LAC 33:IX.2503:~~

~~"I certify under penalty of law that I am the owner or operator of a concentrated animal feeding operation (CAFO), identified as [Name of CAFO], and that said CAFO meets the requirements of LAC 33:IX.2505.I. I have read and understand the eligibility requirements of LAC 33:IX.2505.I.2 for certifying that a CAFO does not discharge or propose to discharge and further certify that this CAFO satisfies the eligibility requirements. As part of this certification, I am including the information required by LAC 33:IX.2505.I.3. I also understand the conditions set forth in LAC 33:IX.2505.I.4, 5, and 6 regarding loss and withdrawal of certification. I certify under penalty of law that this document and all other documents required for this certification were prepared under my direction or supervision and that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons directly involved in gathering and evaluating the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."~~

~~4. Term of Certification. A certification that meets the requirements of Paragraphs I.2 and 3 of this Section shall become effective on the date it is submitted, unless the state administrative authority establishes an effective date of up to 30 days after the date of submission. Certification will remain in effect for five years or until the certification is no longer valid or is withdrawn, whichever occurs first. A certification is no longer valid when a discharge has occurred or when the CAFO ceases to meet the eligibility criteria in Paragraph I.2 of this Section.~~

~~5. Withdrawal of Certification~~

~~a. At any time, a CAFO may withdraw its certification by notifying the state administrative authority by certified mail or an equivalent method of documentation. A certification is withdrawn on the date the notification is submitted to the state administrative authority. The CAFO does not need to specify any reason for the withdrawal in its notification to the state administrative authority.~~

~~b.— If a certification becomes invalid in accordance with Paragraph I.4 of this Section, the CAFO must withdraw its certification within three days of the date on which the CAFO becomes aware that the certification is invalid. Once a CAFO's certification is no longer valid, the CAFO is subject to the requirement in Paragraph D.1 of this Section to seek permit coverage if it discharges or proposes to discharge.~~

#### ~~6.— Recertification~~

~~a.— A previously certified CAFO that does not discharge or propose to discharge may recertify in accordance with this Subsection, except that where the CAFO has discharged, the CAFO may only recertify if the following additional conditions are met:~~

~~i.— the CAFO had a valid certification at the time of the discharge;~~

~~ii.— the owner or operator satisfies the eligibility criteria of Paragraph I.2 of the Section, including any necessary modifications to the CAFO's design, construction, operation, and/or maintenance to permanently address the cause of the discharge and ensure that no discharge from this cause occurs in the future;~~

~~iii.— the CAFO has not previously recertified after a discharge from the same cause; and~~

~~iv.— the owner or operator submits to the state administrative authority for review a description of the discharge, including the date, time, cause, duration, and approximate volume of the discharge, and a detailed explanation of the steps taken by the CAFO to permanently address the cause of the discharge, in addition to submitting a certification in accordance with Paragraph I.3 of this Section.~~

~~b.— Notwithstanding Paragraph I.4 of this Section, a recertification that meets the requirements of Clauses I.6.a.iii and iv of this Section shall only become effective 30 days from the date of submission of the recertification documentation.~~

#### ~~J.— Effect of Certification~~

~~1.— An unpermitted CAFO certified in accordance with Subsection I of this Section is presumed not to propose to discharge. If such a CAFO does discharge, it is not in violation of the requirement that CAFOs that propose to discharge seek permit coverage pursuant to Paragraph D.1 and Subsection F of this Section, with respect to that discharge. In all instances, the discharge of a pollutant without a permit is a violation of the Clean Water Act Section 301(a) prohibition against unauthorized discharges from point sources.~~

~~2.— In any enforcement proceeding for failure to seek permit coverage under Paragraph D.1 or Subsection F of this Section that is related to a discharge from an unpermitted CAFO, the burden is on the CAFO to establish that it did not propose to discharge prior to the discharge when the CAFO either did not submit certification documentation as provided~~

~~in Paragraph I.3 or Clause I.6.a.iv of this Section within at least five years prior to the discharge, or withdrew its certification in accordance with Paragraph I.5 of this Section. Design, construction, operation, and maintenance in accordance with the criteria of Paragraph I.2 of this Section satisfies this burden.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:467 (March 2002), LR 29:1463 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:819 (May 2006), LR 33:2360 (November 2007), LR 35:648 (April 2009), amended by the Office of the Secretary, Legal Division, LR 39:0000 (December 2013).