

- Docket No. RP85-202-009, Trunkline Gas Company
- CAG-19.
Docket Nos. RP85-170-000 and 007, Texas Eastern Transmission Corporation
- CAG-20.
Omitted
- CAG-21.
Docket No. RS92-5-001, Columbia Gas Transmission Corporation
Docket No. RS92-6-001, Columbia Gas Transmission Company
- CAG-22.
Docket Nos. RP93-6-001 and RS92-75-001, Paiute Pipeline Company
- CAG-23.
Docket No. RS92-22-003, Panhandle Eastern Pipe Line Company
- CAG-24.
Omitted
- CAG-25.
Omitted
- CAG-26.
Docket No. CP91-1110-000, Colorado Interstate Gas Company
- CAG-27.
Docket No. CP92-241-007, Kern River Gas Transmission Company
- CAG-28.
Docket No. CP91-2704-003, Blue Lake Gas Storage Company
Docket No. CP91-2705-002, ANR Pipeline Company
Docket No. CP91-2730-002, ANR Storage Company
- CAG-29.
Omitted
- CAG-30.
Docket No. CP82-487-036, Williston Basin Interstate Pipeline Company
- CAG-31.
Docket No. CP92-661-000, Freeport-McMoran, Inc. and Aquilla Energy Marketing Corporation v. K N Energy, Inc.
Docket No. CP92-519-000, K N Energy, Inc.
- CAG-32.
Docket No. CP93-117-000, San Diego Gas & Electric Company
- CAG-33.
Docket No. RS92-60-007, El Paso Natural Gas Company
- CAG-34.
Docket Nos. RP92162-000 and 005, Superior Offshore Pipeline Company

Hydro Agenda

- H-1.
Reserved

Electric Agenda

- E-1.
Docket No. RM93-1-000, Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status. Final Rule.

- E-2.
Omitted

Oil and Gas Agenda

I. Pipeline Rate Matters

- PR-1.
Reserved

II. Restructuring Matters

- RS-1.
Docket Nos. RS92-10-000, RP92-134-000, RP93-15-000, 001, RP93-1-000, CP71-273-000 and CP90-1098-000, Southern Natural Gas Company. Order on compliance filing.
- RS-2.
Docket No. RS92-38-000, Gulf States Transmission Corporation. Order on compliance filing.
- RS-3.
Docket No. RS92-4-000, Colorado Interstate Gas Company. Order on compliance with restructuring rule.
- RS-4.
Docket No. RS92-13-000, Williston Basin Interstate Pipeline Company. Order on compliance with restructuring rule.
- RS-5.
Docket No. RS92-7-000, Michigan Gas Storage Company. Order on compliance with restructuring rule.
- RS-6.
Docket No. RS92-17-000, Iroquois Gas Transmission System, L.P. Order on compliance with restructuring rule.
- RS-7.
Docket Nos. RS92-28-000, 001, 003, 004, RP93-14-002 and CP93-77-000, Algonquin Gas Transmission Company. Order on compliance with restructuring rule and on stipulation and agreement.
- RS-8.
Docket No. RS92-45-000, Natural Gas Pipeline Company of America. Order on compliance plan.

III. Producer Matters

- PF-1.
Reserved

IV. Pipeline Certificate Matters

- PC-1.
Reserved
Dated: February 3, 1993.
- Lois D. Cashell,
Secretary.
[FR Doc. 93-3070 Filed 2-4-93; 2:19 pm]
- BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION FCC To Hold Open Commission Meeting, Thursday, February 11, 1993

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 11, 1993, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

- 1—Common Carrier—Title: Policies and Rules Concerning Interstate Pay-Per-Call Services. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking and Notice of Inquiry* concerning the provision of interstate pay-per-call services to conform with the requirements of the Telephone Disclosure and Dispute Resolution Act.
- 1—Common Carrier—Title: Policies and Rules Concerning Interstate 900

Telecommunications Services (CC Docket No. 91-65). Summary: The Commission will consider adoption of an *Order on Reconsideration* regarding various petitions for reconsideration governing the provision of interstate 900 services.

- 2—Common Carrier—Title: Amendment of the Commission's Rules Regarding Regulation of International Receive-Only Earth Stations (RM-7931). Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* concerning the licensing of international receive-only earth stations.
- 3—Mass Media—Title: Amendment of the Commission's Rules With Regard to the Instructional Television Fixed Service (ITFS). Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* regarding an ITFS window filing procedure.
- 4—Mass Media—Title: Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992—Direct Broadcast Satellite Public Service Obligations. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* regarding the application of public interest requirements and non-commercial educational and informational programming carriage obligations to direct broadcast satellite (DBS) services.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued February 4, 1993.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-3104 Filed 2-4-93; 2:48 pm]

BILLING CODE 6712-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, February 11, 1993.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Steel Branch Mining Company*, Docket No. WEVA 91-2077, etc. (Issues include whether the judge erred in finding Steele Branch violated 30 CFR § 77.404(a), and § 50.11(b).)
2. *Energy West Mining Company*, Docket No. WEST 91-83-R. (Issues include whether the judge erred in finding Energy West violated 30 CFR § 50.20.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629/(202) 708-9300 for TDD Relay/800-877-8339 Toll Free.

Dated: February 3, 1993.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93-3107 Filed 2-4-93; 3:04 pm]

BILLING CODE 6735-01-M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act
(Public Law 94-409) [5 U.S.C. Section 552b]

DATE AND TIME: Thursday, February 4, 1993, 1:00 p.m., Eastern Daylight Time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed—Meeting.

MATTER CONSIDERED: Discussion by the National Commissioners involving one case pursuant to a reference under 28 C.F.R. Section 2.17. This case was originally heard by an examiner panel

wherein the inmate of Federal prison applied for parole. This is an emergency meeting which requires immediate consideration by the Commission because of the statutory deadline involved in the case.

AGENCY CONTACT: Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492-5968.

Dated: February 4, 1993.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 93-3101 Filed 2-4-93; 2:47 pm]

BILLING CODE 4410-01-M

Corrections

Federal Register

Vol. 58, No. 24

Monday, February 8, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-68-202]

United States Standards for Grades of Canned Green Beans and Canned Waxed Beans

Correction

In rule document 93-930 beginning on page 4295 in the issue of Thursday, January 14, 1993, make the following correction:

§ 52.449 [Corrected]

1. On page 4299, in the second column, in § 52.449(c)(1)(iii), in the first line, "reasonably" should read "fairly".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-070-03-4210-04; M81796]

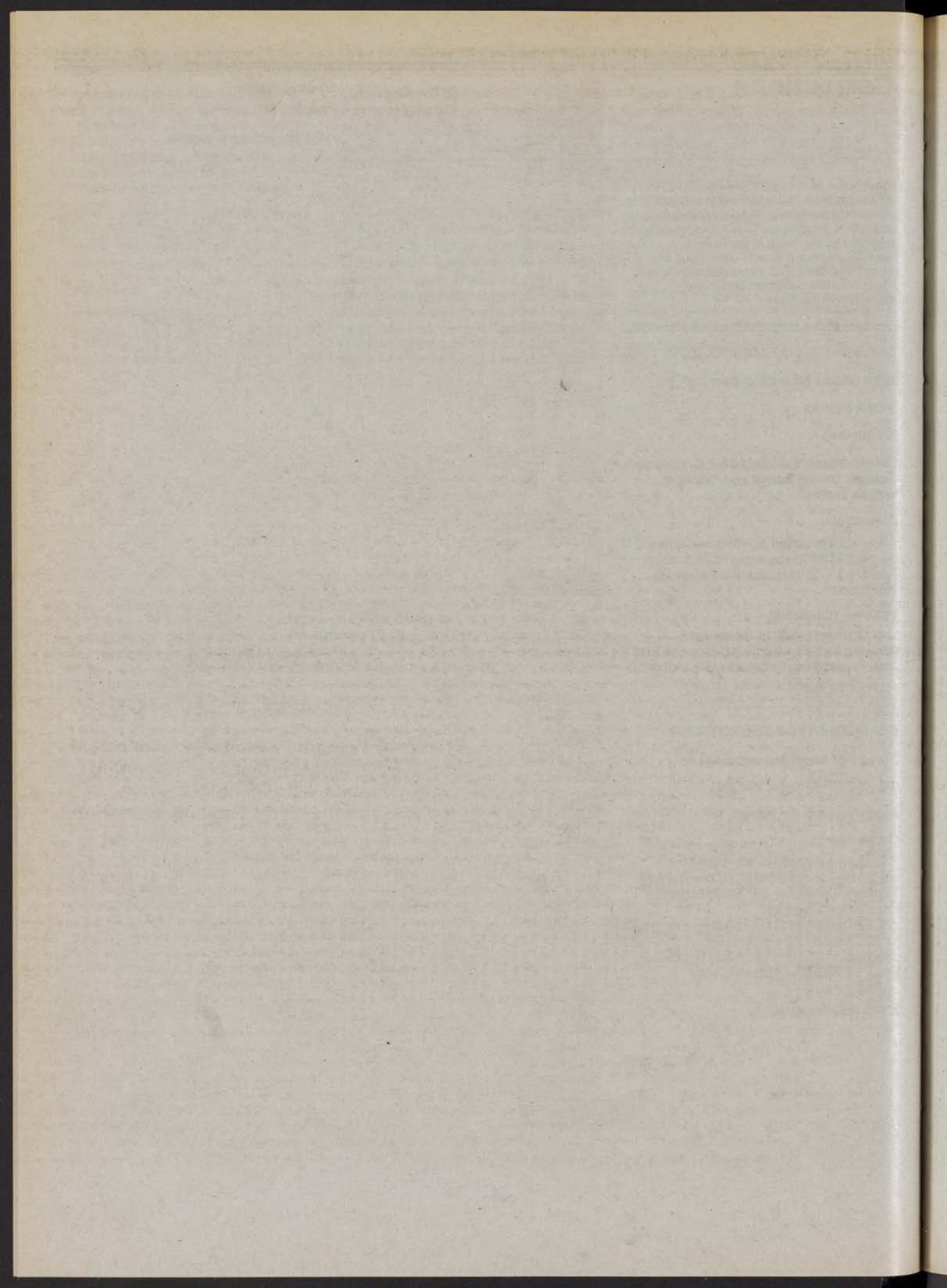
Realty Action: Exchange, MT

Correction

In notice document 92-30244 beginning on page 59120 in the issue of Monday, December 14, 1992, make the following correction:

1. On page 59121, in the first column, under *Powell County*, in land description T. 10 N., R. 9 W., in the last line, "NE $\frac{1}{4}$, SW $\frac{1}{4}$," should read "NE $\frac{1}{4}$ SW $\frac{1}{4}$,".

BILLING CODE 1505-01-D



Federal Register

Monday
February 8, 1993

Part II

Environmental Protection Agency

National Pollutant Discharge Elimination
System General Permit and Reporting
Requirements for Discharges From
Concentrated Animal Feeding Operations;
Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4552-8]

National Pollutant Discharge Elimination System General Permit and Reporting Requirements for Discharges From Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency.

ACTION: Region 6 public notice of the final permitting decision. General NPDES permits for discharges from confined animal feeding operations.

SUMMARY: Pursuant to sections 301, 304 (b) and (c), and 306 (b) and (c) of the Clean Water Act (CWA) 40 CFR 122.23 defines concentrated animal feeding operations as point sources subject to the NPDES permit program. 40 CFR part 122, appendix B lists the criteria for determining a Concentrated Animal Feeding Operation (CAFOs) (§ 122.23). 40 CFR part 412 establishes the effluent limitation guidelines for Feedlots pursuant to sections 306 (b) and (c) of the Clean Water Act.

This is to give notice that the U.S. Environmental Protection Agency, Region 6, has made a final permitting decision and will issue the following Permits under the National Pollutant Discharge Elimination System. The permits will become effective 30 days after the date of this Public Notice. Any substantial changes from the Draft Permit are cited.

This notice of the issuance of separate general permits for concentrated animal feeding operations in four States (Louisiana, New Mexico, Oklahoma, and Texas) without authorized NPDES State programs; on Indian lands in New Mexico and Oklahoma. Separate general permits are being noticed for each State. DATES: The permit will become effective on March 10, 1993.

ADDRESSES: The issuance is based on a final staff review of the administrative record and comments received. A Response to Comments is available by writing to: Ellen Caldwell, Permits Branch of Water Division (6W-PS), U.S. Environmental Protection Agency, Region 6, 1445 Ross Ave., suite 1200, Dallas, Texas 75202 (214) 655-7190. The public record is located at EPA Region 6, and is available upon written request. Requests for copies of the public record should be addressed to Ellen Caldwell at the address above. A reasonable fee may be charged for copying. Further information including the administrative record may be viewed at the above address between 8

a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell, (214) 655-7190.

SUPPLEMENTARY INFORMATION:

Contents of this Preamble

- Part I. Changes to the Draft Permit.
- Part II. Responsiveness Summary
- Part III. Economic Impact
- Part IV. Effect of Additional Federal Regulations

- A. National Environmental Policy Act
- B. Executive Order 12291
- C. Paperwork Reduction Act
- D. Regulatory Flexibility Act

U.S. Environmental Protection Agency—Region 6, Public Notice of the Final Permitting Decision.

Part I. Changes to the Draft Permit

Based on information received during the public comment period the Agency had made minor changes to the conditions in the draft permit. The following are changes which were made to the draft permit which was proposed July 22, 1992 (57 FR 32475):

1. Under Part I, Section B.1. Existing Facilities and Section D., owners or operators of concentrated animal feeding operations (CAFO), as defined in 40 CFR part 122 appendix B, are authorized under the terms and conditions of this general permit upon submission of a notice of intent (NOI). This NOI form has been included as appendix B of this general permit.

2. Under Part I, Section B.4. Expanding Facilities, facilities expanding operations to more than the number of animals specified in 40 CFR part 122 appendix B(a) will be required to submit a new NOI prior to construction of the expansion.

3. To comply with statutory requirements in 40 CFR 122.49; Part I of the general permit, Section C. Limitations on Coverage has been changed to limit from permit coverage: CAFOs which adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat; CAFOs which adversely affect properties listed or eligible for listing in the National Register of Historic Places.

4. Item 4. of Part I, Section C. has been changed to limit from coverage CAFOs that discharge all their runoff and waste water to a publicly owned sanitary sewer system.

5. The term "waters of the U.S." has been clarified in various parts of this general permit, listing the defined waters in 40 CFR 122.2. This regulatory definition applies for every reference to waters of the U.S. in this general permit.

6. Part III, Section B. has been clarified to state more clearly that when

provisions in an approved Soil Conservation Service (SCS) plan are substituted for a applicable Best Management Practices (BMP) or portions of the Pollution Prevention Plan (PPP), the PPP must refer to the appropriate section of the SCS plan and a copy of this SCS plan must be kept on site.

7. Date log requirements indicating monthly inspection of the retention facility have been changed to quarterly inspections.

8. Requirements for manure which is sold or given to other persons for use have been moved from Part III, Section B. to Part III, Section B.2.f.(2)(j). These requirements have been changed to require the permittee to maintain a log of manure sold in wet tons, dry tons, or cubic yards and the permittee must make available to the hauler any nutrient sample analysis from that year.

9. Requirements for Retention Capacity Calculations, Retention Facility Embankments, Retention Facility Dewatering, and permanent markers have been moved from Part III, Section B.1. to Part III, Section B.2.f.(2) (B), (C), (D), and (E) respectively. Slight changes have been made in these items for clarification.

10. The requirement that facilities shall not expand operations, either in size or numbers of animals, prior to amending or enlarging the waste handling procedures and structures to accommodate any additional wastes that will be generated by the expanded operations has been added to Part III, Section B.1.b.

11. Part III, Section B.d. has been modified that new facilities shall not be built in a water of the U.S.

12. Part III, Section B.f. has been changed to clarify that water retention facilities or holding pens may not be located in the 100-year flood plain unless the facility is protected from inundation and damage that may occur during that flood event.

13. Part III, Section B.g. has been modified that facilities shall not locate waste water retention facilities, holding pens or waste/wastewater disposal sites closer to water wells than specified by State requirements.

14. Part III, Section B.i. has been modified that waste handling, treatment, and management shall not result in the contamination or drinking water.

15. Part III, Section B.1. has been modified to require the proper disposal time of dead animals to be three (3) days instead of 24 hours.

16. Items n. and o. of Part III, Section B. have been moved from the Pollution Prevention Plans.

17. Part III, Section B.2.a. has been changed to clarify that the Pollution Prevention Plan may refer to the Soil Conservation Service plan when the SCS plan documentation contains equivalent requirements for the facility.

18. The schedule for completion of Pollution Prevention Plans has been modified in Part III, Section B.2.b. to separate large facilities, medium facilities, and small facilities with different time requirements for completion.

19. The time requirement for changes in a Pollution Prevention Plan which does not meet minimum requirements after notification by the Director has been changed from 30 to 90 days in Part III, Section B.2.d.

20. Part III, Section B.2.f.(2)(F) has included a requirement that a rain gauge shall be kept on site and properly maintained and that log of all measurable rainfall events shall be kept with the Pollution Prevention Plan. This also replaces the requirement in the draft general permit in Part IV, Monitoring and Reporting Requirements, that requires information from the nearest available weather station concerning precipitation events.

21. Under Part III, Section B.2.f.(2)(H)(a), documentation of no hydrologic connection has been simplified and condensed; no longer requiring depth to ground water, thickness and lithology of the uppermost aquifer, and a piezometric map. This item now allows for documentation of no hydrologic connection to be certified by a qualified ground water scientist.

22. Site-specific conditions are now considered in the design of liner construction in Part III, Section B.2.f.(2)(H)(b).

23. The requirement for liner inspection has been removed from Part III, Section B.2.f.(2)(H)(c).

24. Part III, Section B.2.f.(2)(H)(c) now includes the requirement that no trees shall be allowed to grow within the potential distance of the root zone.

25. These requirements: Documentation of liner maintenance shall be kept with the Pollution Prevention Plan. The permittee shall have a Soil Conservation Service engineer, Professional Engineer, or qualified groundwater scientist review the documentation and do a site evaluation every five years, or once every permit term whichever comes first; have been added to Part III, Section B.2.f.(2)(H)(c).

26. Part III, Section B.2.f.(2)(H)(c) has been changed to only require the installation of a leak detection system or monitoring wells when notified by the

Director that the potential exists for the contamination of surface waters or drinking water. Documentation of compliance with the notification and all sampling data must be kept with the Pollution Prevention Plan.

27. "It shall be considered 'Proper Operation and Maintenance' for a facility which has been properly operated, and that is in danger of imminent overflow due to chronic or catastrophic rainfall, to discharge waste waters to land application sites for filtering prior to discharging to waters of the U.S." has been added as Part III, Section B.2.f.(2)(I)(e).

28. "The operator shall notify the appropriate fish and wildlife agency in the event of any significant fish, wildlife, or migratory bird/endangered species kill or die-off on or near retention ponds or in fields where waste has been applied, and which could reasonably have resulted from waste management at the facility" has been added to Part III, Section B.2.f.(2)(I)(h) to provide protection from land disposal or application of waste water.

29. Where land application sites are isolated from surface waters and no potential exists for runoff to reach a water of the U.S., application rates may exceed nutrient crop uptake rates as provided in an approved state program. No land application under this section shall cause or contribute to a violation of water quality standards has been added as Part III, Section B.2.f.(2)(I)(h).

30. Part III, Section B.2.f.(2)(J) requires: (1) A description of waste handling procedures and equipment availability; (2) the calculations and assumptions used for determining land application rates; and (3) any nutrient analysis data if laboratory analysis is done to be included in the Pollution Prevention Plan if manure is land applied.

31. Storage and/or surface disposal of manure in the 100-year flood plain or near water courses is allowed if protected by adequate berms or other structures; Part III, Section B.2.f.(2)(J)(a). The clarification: The land application of wastes at agricultural rates shall not be considered surface disposal in this case and is not prohibited, has also been added.

32. "Where land application sites are isolated from surface waters and no potential exists for runoff to reach a water of the U.S., application rates may exceed nutrient crop uptake rates as provided in an approved state program. No land application under this section shall cause or contribute to a violation of water quality standards", has been added as Part III, Section B.2.f.(2)(J)(i).

33. The item on good housekeeping requirements has been removed from Part III, Section B.2. Pollution Prevention Plan requirements.

34. The requirements for the evaluation of Recommended Management Practices listed in Appendix A has been removed Part III, Section B.2. Pollution Prevention Plan requirements.

35. Discharge sampling requirements have been modified based on CAFO size to separate large facilities, medium facilities, and small facilities with different schedules for analysis in Part IV, Section A.5.

36. Analysis requirements for total phosphorus, total Kjeldahl nitrogen and nitrate nitrogen have been removed from Part IV, Section A.7.

37. Items for Anticipated Noncompliance, Other Noncompliance Reporting, Bypass of Treatment Facilities, and Upset Conditions have been removed from Part IV.

38. Items regarding Toxic Pollutants and Oil and Hazardous Substance Liability have been removed from Part V.

39. Definitions for Agronomic rates, Best Available Technology, Best Conventional Technology, Hydrologic connection, and Qualified groundwater scientist have been added to, and the definition for Bypass has been removed from Part VII.

40. The definition for Concentrated animal feeding operation has been clarified in Part VII.

Part II. Responsiveness Summary

Many issues, questions and comments were submitted to the Agency during the public comment period. Below is a summary of the issues raised and the Agency's responses.

A. Corrections and General Permitting Issues

1. Several commenters requested corrections of language in the fact sheet published with the proposed permit. A fact sheet is published to explain the permitting decisions used to develop a proposed permit. A responsiveness summary or a response to comments accompanies the final permit and serves as the explanation of the permitting decisions made in response to the comments received. Because the fact sheet will not be published again, corrections to it will not be necessary. Where the comments illustrate confusion or misunderstanding of issues or terms explained in the fact sheet, they will be addressed in the responsiveness summary under the appropriate subject heading.

2. Almost all commenters requested answers in writing to the questions, comments, and concerns which they submitted. Unfortunately many comments were received with no return address. It is the administrative responsibility of EPA to provide a responsiveness summary to all persons that provided comments during the public hearing process or public comment period (40 CFR 124.17). EPA regrets that it will not be able to send a response to comments to those commenters that neglected to provide the Agency with a return address; however, the publication of this responsiveness summary will serve to inform those persons of the Agency's decisions.

3. Many of the comments received express concern that the only reason that Region 6 is issuing the permit is in response to special interest groups opposed to the dairy industry in Texas. The commenters are concerned that EPA will be swayed in its permitting decisions by portions of reports which were taken out of context to reflect a worst case scenario. These persons requested that Region 6 not rush its efforts for the Region to use all available sources of information to develop a reasonable general permit. A few persons questioned whether Region 6 would really listen and consider the testimony and comments made at the public hearings which were held in each state.

EPA reviews all documents referred to in comments which are submitted during the comment period. EPA weighs all scientific and factual information, and other comments whether submitted in writing during the comment period, or as testimony during the public hearing process as required in 40 CFR 124.11 and 124.12.

4. Many persons pointed out that farmers are natural conservationists, and as such are natural environmentalists. Some persons opposed the permit because they believed that agriculture was being blamed for "naturally occurring circumstances". Many persons were concerned with the perception of agriculture as a source of pollution that would accompany the issuance of this permit. These commenters suggest that the private citizens which operate these facilities are more familiar with what is "Proper Operation and Management" of a CAFO than EPA, and that they can make better determinations about the protection of the natural resources of the land and water.

While EPA agrees with the commenters that most farmers are good natural conservationists, it is apparent

from the growing body of information that water quality problems exist which are attributable to animal waste management. Reasons for this may vary, however, it is EPA's responsibility to regulate all point sources of pollution under the authority of the Clean Water Act. These facilities are included in the definition of a point source in part 502 of the Act. Region 6 believes that the requirements reflected in the final general permit do coincide with the good management practices already established in the agricultural community, and will not prove too burdensome for those operators which have established good environmental practices.

5. The Region received several comments expressing the need for a permit to be available for unpermitted CAFOs to be compliant with the Clean Water Act. CAFOs in Region 6 may be discharging in violation of the Clean Water Act. Region 6 believes that the first step in improving water quality and Clean Water Act compliance is to provide a permitting vehicle which will be protective for the environment and cost effective for the operators of CAFOs.

6. While many commenters and producer groups endorse the Region's use of a general permit, some commenters question the need for a permitting program in Region 6 states. Many persons questioned if any water quality problems exist in Region 6 which are associated with animal wastes or CAFOs. Many commenters suggested that EPA exhaust all state delegation activities before issuing a general permit. These commenters stated that they believed it would cause confusion over jurisdiction if there were both state and federal level regulation with which to comply.

Region 6 believes that the time for federal permitting action in the four states administered by this Region is past due. EPA Region 6 carries the burden of a large permitting program and must prioritize its workload. The most important aspect of this priority system is the impairment of water quality. It has become apparent that animal wastes are one of the major contributors to water quality problems in many watersheds across the nation. In Region 6 the water quality inventories which are compiled by the state water quality agencies show a significant number of water bodies which are being impaired by the contribution of animal wastes. In Texas there are at least four segments of state river basins which are not meeting the standards set by the state. Of the water bodies which are listed as impaired in

Oklahoma the waters impaired by CAFOs total 5 lake segments out of 21, and 10 river segments out of 42. In addition, Oklahoma has documented several fish kills associated with CAFO runoff. Oklahoma collects more specific information on CAFO associated water quality problems which may explain the higher numbers. Several segments of the Lake Pontchartrain Basin in Louisiana are impaired by CAFOs, as well as two other river basins in that state. New Mexico, which has fewer surface waters, has more documentation on groundwater contamination problems, however, CAFO impairment of the Pecos River Basin is being tracked by the state.

EPA agrees with the commenters inclination toward the delegation of the NPDES program authority to the States of Region 6. Section 402(b) of the Act allows states to request authority to administer the NPDES program in lieu of the EPA. This means that States must interpret and apply national standards through day-to-day program actions and mount a vigorous program of compliance and enforcement. To assume delegation a formal program package consisting of a Memorandum of Agreement, a Program Description, the Attorney General's Statement and a letter from the Governor must be submitted to the Region. The Region must carefully review the package for statutory completeness. Currently there are 39 states which have been authorized the NPDES program. Of the 39 states, the one State in Region 6 to have been authorized is the State of Arkansas. At the present time, EPA has not received an approvable program from any of the remaining four states, Louisiana, Texas, Oklahoma, and New Mexico. Region 6 is continuing to work closely with states in the Region, assisting them in their efforts to assume the NPDES program. Until the State has assumed authority for the NPDES permitting program, the permittee will be responsible for compliance with both State and Federal requirements. States which administer the NPDES program must control CAFOs with the same degree of stringency and in a manner consistent with the federal regulations.

7. Several of the comments received suggested that this permit was more stringent than the federal regulations. A few persons questioned why the four States in Region 6 would be subject to the general permit and not the other States in the nation. Region 6 has developed a general permit which reflects the federal program requirements which exist now. These requirements include a technology standard which was implemented in

1974, and the minimum technology standard for storm water permits (a Pollution Prevention Plan) which was established in 1991. The permit also includes Best Management Practices which the Agency believes are necessary to protect water quality from improper management of animal wastes. EPA would like to remind the public that a federally administered permit must include compliance with some federal programs which are not required of state administered permits (e.g. the requirement of an environmental review and possible Environmental Impact Statement under the National Environmental Policy Act).

Additionally, Region 6 is only authorized to permit facilities in Texas, Louisiana, Oklahoma and New Mexico. Region 6 oversees the program administered by Arkansas.

8. Many commenters from Oklahoma were concerned with EPA's authority to regulate CAFO facilities in their state because the state does not recognize CAFOs as a point source. Many commenters and producer groups questioned why EPA would have the need to regulate facilities which were already sufficiently regulated under existing state programs. Many commenters stated that the permit was more stringent than the state requirements. These commenters further requested that EPA simply adopt the existing state program or permit instead of using the proposed general permit; and that the permit should contain only the state water quality standards and requirements.

Section 502 of the Clean Water Act includes concentrated animal feeding operations in the definition of point sources to be regulated by EPA through NPDES permits. This requirement of federal law is reflected in the definitions at 40 CFR 122.23 and Appendix B which define concentrated animal feeding operations as a point source.

Section 301 of the Act clearly states that EPA cannot be less stringent than currently defined in the national technology standards. However, it should be noted that any more stringent state treatment standards are required to be included in NPDES permits by this section of the Clean Water Act. EPA must, at a minimum, include the technology standards established by the Agency.

9. Many of the comments provided by operators, producer groups, and state agricultural agencies request that EPA use the information and services available through the USDA Soil Conservation Service and state Agriculture Departments and Extension Services in the development of the

permit. Many persons expressed the opinion that the states had developed sound water quality management programs and that Region 6 should use them. Additionally, some commenters suggested that EPA should consult with the varying state agencies before proposing any new programs in that state.

During the comment period and in the process of final decision making, EPA has consulted with both the regulated community and agricultural agencies in all the States. In addition EPA has consulted the expertise of the USDA Soil Conservation Service and the U.S. Fish and Wildlife.

10. Several comments requested that the general permits for the four States be the same in regards to the requirements in the permit to provide economic equity. Conversely, many persons expressed doubt about EPA's ability to provide a general permit which would take into account the diversity of locale, geography, and climatic conditions that exist in Region 6. Some concerned citizens question EPA's use of a general permit for and its ability to protect water quality.

In developing this general permit, Region 6 has tried to maintain consistent requirements for each of the four states. However, where more stringent state standards exist and are needed to protect water quality in that state, specific state language or requirements have been included in the general permit. Region 6 has also tried to include requirements which will be protective of the environment while allowing for site specific variation when it is appropriate to provide adequate environmental protection. EPA has included management practices and pollution prevention requirements to insure the protectiveness of the general permit while at the same time has allowed for site specific variation where it can be documented as appropriate. The permit provides for the protection of water quality and site specific flexibility.

11. A few commenters stated the opinion that shorter, clearer permits which were easier to comply with would produce more compliance, and therefore, provide more environmental protection. Many commenters suggested that EPA use incentives for environmental protection instead of burdensome regulations.

Region 6 has worked with the public, the regulated producer groups, state and federal agencies to insure that this permit will be protective of water quality and will still be clear to the permittee. In addition, Region 6 has made a considerable effort through

workshops/public hearings and this responsiveness summary that the regulated public understand the permit conditions. Region 6 believes that the regulated public will understand and comply with the terms of this general permit.

12. Many owner/operators and producer groups requested that the permit be re-proposed as draft or submitted to the CAFO industry to review prior to final issuance. When EPA makes substantial changes to the permit requirements, the Agency may elect to provide an additional public comment period on the changes. EPA has made only minor changes to the draft permit. Region 6 has attempted to make both the format and the language of the permit clearer. The requirements of "no discharge", Best Management Practices and the documentation of a Pollution Plan remain the same. EPA will not be re-proposing a draft permit. The permit will become final 30 days after the date of publication in the Federal Register.

13. Some person were concerned that more government professionals would have to be hired at considerable salaries to enforce the requirements in the permit. Others suggested the EPA should utilize the idea proposed in Texas to utilize state health inspectors for water quality assessment. Health inspector's on average, visit these facilities once per month.

Congress authorizes EPA's operating budget. EPA assumes the responsibility of apportioning its' budget to best address society's challenges to water quality. Information from the States will help Region 6 determine its inspection priorities.

14. Many comments were received expressing concern that many of the water quality problems associated with animal feeding operations were a result of smaller, unregulated facilities. Many commenters note that these guidelines and requirements apply to the larger facilities, and requested that EPA develop regulatory guidelines for small facilities which do not fall under the regulation of this permit. Several concerned citizens expressed the opinion that the Bosque River Basin watershed was over populated by dairy and cattle operations; and that this concentrations of operations was unique to this watershed. These citizens requested that this watershed be excluded from the general permit and be required to obtain individual permits in order to protect surface water and ground water resources.

EPA agrees that, of the watersheds which are impaired by animal wastes, the majority of the operations in those

watersheds are not specifically listed as point sources in 40 CFR 122.23. This may indicate that non-point source facilities are significant contributors to water quality impairments. However small facilities can be designated as a "point source" by the Director after a site assessment has been done, and can be regulated using this permit or another permitting action.

EPA does not believe that the Bosque River watershed is unique in Region 6. There are several watersheds in Region 6 which are heavily populated by animal feeding operations and which have impaired water quality. A review of these watersheds with State water quality officials indicates that the water quality impairment is likely to result of many factors. These factors would include the number, types and sizes of facilities, the nature of the watershed, the climatic conditions of the area, as well as, contributions from unregulated facilities and non-compliance problems. EPA believes that the first step in protecting the water quality in these watersheds and others in the Region from water quality impairments from animal wastes is the issue of this general permit. This will provide stringent requirements which are protective of water quality, and at the same time provides EPA with a strong enforcement tool against non-compliance. EPA points out that the issuance of this general permit does not preclude the Director from requiring facilities on the Bosque watershed to apply for an individual permit. Region 6 is also concerned about the animal waste contributions of the non-point sources on regional watersheds. For this reason Region 6 is an active participant of the national workgroup to study EPA's activities and its regulation of CAFOs.

15. Many commenters questioned why Region 6 has "linked" the Storm Water NPDES program with Concentrated Animal Feeding Operations (CAFOs). Several operators and producer associations believe that CAFOs are exempt from the Storm Water Program because their Standard Industrial Classification (SIC) code is 0211. Several commenters requested clarification of the reference to the Storm Water Program which requires facilities covered by the program to "at a minimum obtain coverage under a general permit promulgated for storm water".

The regulations which were published November 16, 1990 (55 FR 47990) require specific industries to apply for NPDES permits which cover storm water discharges. The final regulation listed 14 categories of industries which have "storm water

discharges associated with industrial activity" which require permitting. Category 1 of the storm water regulations included all facilities which have National Effluent Guidelines. Feedlots (facilities with concentrations of 1000 animal units or more) have National Effluent Guidelines listed at 40 CFR 412. These facilities were required to apply for their storm water related discharges on or before October 1, 1992 or gain coverage under a permit which has been issued to cover storm water discharge requirements. EPA has included the technology requirements published for storm water discharges in the general permit for CAFOs. This general permit includes permitting requirements based on the effluent guidelines for process waters (all produced waters and runoff from the areas of animal confinement) and Pollution Prevention Plan to address requirements for all storm water related discharges. This general permit satisfies all permitting requirements for the feedlot industry and CAFOs.

16. Several comments received requested a definition of storm water runoff. Storm water runoff includes runoff caused by rainfall, snowmelt, or drainage which flows overland instead of percolation into the soils due to saturation. This term is no longer included in the CAFO general permit.

17. Many commenters who understood the coverage and technology requirements of the storm water program were concerned that the storm water permitting strategy as outlined by EPA would cause storm water minimum requirements to be in the process of change for several years, and that this would require that the regulated public under this program to be "shooting at a moving target" when trying to construct or meet permitting requirements.

It is true that the requirements for storm water discharges from many industries are still being developed. However, the technology standard applied to feedlot operations is very protective of water quality and has been in place since 1974.

18. Many commenters noted that the economic analysis for the national effluent guidelines was done twenty years ago. Several persons stated that the original cost of construction was estimated at \$24,000-28,000, and that the cost of constructing the same structures today are much higher (estimated at \$100,000). Many persons requested that an economic analysis be done to determine the cost of the proposed permit requirements. The regulated public expressed concern that the cost of compliance with the permit technology and recordkeeping

requirements would be a serious burden on the family owned facilities. Several commenters noted that the cost of the Texas permitting program had cost dairies up to \$200 per cow. They estimated that the requirements in the proposed permit would cost dairies \$300 per cow. Many persons expressed the opinion that the state regulatory programs were adequate; and that a federal permit was duplication and a waste of tax dollars. A few commenters point out that the Labor Statistics Board noted the agriculture industry as having a 5% increase in employment while all other industries have dropped. These commenters state that agribusiness supports many employees and related businesses, and an economic impact on the dairy industry will have an economic impact on the national economy. Commenters asked if the Agency had taken into account the effect this permit would have on small businesses. These commenters reminded EPA of the current Administrations efforts to reduce the regulatory burden on small business. They explain that this additional cost of doing business would drive up costs and have a detrimental effect on the nations economy.

Challenges to the requirements established in effluent guidelines must be made when the guidelines are publicly noticed. In issuing a permitting action, EPA is under no obligation to defend either the technology or the economic analysis done in establishing an existing effluent guideline or new source performance standard. However, Region 6 has provided information in this responsiveness summary which compares the current status of the economic impact to the economic analysis which was published with the guidelines. Region 6 has also made an attempt to include the impact of the required Best Management Practices and Pollution Prevention Plan. The July 22, 1992 draft notice summarized EPA's belief that this permit would be more economically beneficial to the regulated community than the individual application process.

The Clean Water Act requires that EPA consider a "no discharge" technology where it is feasible when establishing effluent guidelines for industries. In the economic analysis that was done in the early 1970's it was established that the waste products generated by concentrated animal feeding operations were reusable resources and need not be discharged into waters of the U.S. The original economic analysis for construction of the basic technology was done when the BAT requirements for the national

effluent guidelines (40 CFR part 412) were published in February of 1974.

Several commenters indicated that the original economic analysis was no longer realistic to determine economic impacts on Concentrated Animal Feeding Operations. In addition, several commenters felt that the cost of these draft requirements would be so burdensome as to force them to discontinue their operations. Several commenters felt that the economic impact of discontinuing these operations would be even more severe for the communities in which they operate. In response, the Agency performed updated cost estimates (using November 1992 dollar values) for the improvements required for various concentrated animal feeding operations, using installation and cost information provided by the Soil Conservation Service, Tarleton State University Institute for Applied Research, and the Texas Agricultural Extension Service.

These comparisons indicate that the costs originally developed were reasonable and realistic for today. Table 1 gives a summary of these cost estimates, with a range of approximate values, from basic, minimum requirements to full installation of all best available technology, for various operations.

TABLE 1—APPROXIMATE COST ESTIMATES FOR WASTE STORAGE PONDS, DIVERSIONS AND MONITORING

Type of operation	Cost for medium size operation	Cost for large size operation
Dairy	200 head— \$20,000.	700 head— \$65,000.
Beef	300 head— \$40,000.	1,000 head— \$70,000.
Swine	750 head— \$40,000.	2,500 head— \$65,000.
Poultry	9,000 birds— \$85,000.	100,000 birds— \$165,000.

The cost estimates developed when the original regulations were promulgated in 1974 were approximately \$24,000 to \$28,000 for installation of a comparable "no discharge technology" type of system. These costs established in 1974, when extrapolated to 1992 dollars using the standard Engineering News Record cost indexes for construction of this type of waste management facility, increased to approximately \$98,000. The cost estimates shown in Table 1 were developed from current cost information (1992 dollars) for these types of facilities. This comparison clearly shows that the cost estimates are well within the original estimates for the installation of the required technology.

Information has been received from other environmental professionals, currently engaged in providing these services, on the costs associated with improvements based on the requirements of the draft regulations. This information indicates that these cost estimates are within the range of reasonable and realistic costs for these types of available technology. One report prepared by an individual had costs for specific items that were up to ten times the current costs for these available services, and had many items listed in their costs estimates (e.g. on-site dewatering equipment, application prepared by an engineer, plastic covers for manure piles, etc.) that are not required under the requirements of this final permit. Even with all of these extra unnecessary costs added into the estimate, the economic impact was an increase of less than 4 percent over current costs under existing state regulations.

EPA provides economic analyses in establishing a requirement of a new technology. EPA is not required to provide an economic analysis for the best management practices (BMP's) or recordkeeping included in permits to insure the compliance with effluent limitations and a record of that compliance. However, Region 6 recognizes that the cost of compliance with the management practices and recordkeeping requirements of the permit constitute an additional cost to the permittee. Region 6 has made a sincere effort to reduce the burden of these requirements by reducing and/or modifying many of these where water quality will not be compromised.

The pollution prevention plan required by the final permit will have several components, including a site map of the facility (existing maps or U.S.G.S. maps may be used), a list of the potential pollutant sources, size of retention capacity and site specific factors, construction specifications, information on direct hydrologic connections, land application rates and calculations, waste handling procedures, and recordkeeping requirements. Cost estimates provided by environmental professionals for drawing this information together and developing a pollution prevention plan range begin at approximately \$2500 and increase, depending on the amount of work involved. However, these estimates were based on the Pollution Prevention Plan (PPP) which was published with the proposed permit which included more documentation than the PPP in the final permit.

Region 6 believes that some of the documentation and all of the

recordkeeping can be prepared by the operator at little expense. Much of this information is already required by state specific programs, and therefore the pollution prevention plan is a vehicle to compile the pertinent information and determine the additional measures that will be required to reach compliance with this final permit. There is no requirement that a Professional Engineer prepare the pollution prevention plan. It may be prepared by a representative of the Soil Conservation Service, an Engineer or other environmental professional, or, in many cases, the facility operator himself. The pollution prevention plan must include all components listed in the requirements of this final permit, much of which will be provided by the facility operator anyway. The facility operator may choose to compile this information and develop the pollution prevention plan himself, thus reducing the cost even further. The recordkeeping requirements are for documentation of ongoing implementation of this final permit, and should be done by the facility operator and staff. The cost of additional outside professionals should not be required to provide this information. Several commenters indicated that no other state or region had requirements as strict as those required in the draft permit. In response, the Agency believes that the requirements listed in the draft permit reflect the regulations as they are now in place, and as they have been since the national effluent guidelines were promulgated in 1974. Many of the best management practices and pollution prevention plan requirements reflect the best technology available as developed in 1991 in the storm water program.

In addition, there are several states that have requirements as strict or even stricter than the minimum requirements set forth in the draft permit. In a report, "Livestock and Poultry Waste Management: Problems and Solutions," prepared for the Office of Policy, Planning and Evaluation, U.S. Environmental Protection Agency, in May 1991, summaries of several state programs indicate that Ohio, Oregon and Florida all have programs that reflect more stringent requirements. Additional states, such as California and Kansas, also have requirements as strict or stricter than the Agency's requirements for this permit.

While EPA does not wish to place an economic burden on the meat, poultry, and dairy industries, it must remind the regulated public that permitting responsibility and the retention technology for these industries were established as regulations almost 20 years ago. Those facilities which remain

unpermitted and without the retention capacity to retain the 25 year, 24 hour storm event have been in violation of federal law since 1976 or for the life of their business, which ever came later. These facilities which have been noncompliant with the requirements of the regulations and the Clean Water Act have enjoyed an economic benefit over other facilities which have complied with the established requirements.

19. Many commenters expressed concerns over how this permit conforms with the Paperwork Reduction Act and the Regulatory Flexibility Act. Some commenters questioned how the Agency could state that this permit would be less paperwork and how it would create an economic benefit for the regulated community. In addition, several commenters were concerned about the effect of this permit on small businesses.

EPA's action in today's permit does not require EPA to perform additional activities under the Paperwork Reduction Act. The Agency notes that, while some paperwork is required in order to meet the requirements of this final permit, it is substantially less than the amount of paperwork required to file an application and comply with an individual National Permit Discharge Elimination System (NPDES) permit. Permits are required for these facilities under the Clean Water Act of 1972, and the two vehicles available for permitting are this General Permit and an individual permit. Individual permitting is very time-consuming for both the applicant and the Agency, and requires much more paperwork, effort and expense for the applicant. In addition, the documentation requirements of the General Permit for pollution prevention activities are the minimum acceptable requirements to the Agency for any industrial permit for CAFOs and would also be included in any individual permit issued for a concentrated animal feeding operation. Thus, compliance with this final permit does reflect the principles of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as well as providing an economic benefit in the form of reduced costs for application and compliance. The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES effluent guidelines and the storm water programs under provisions of the Clean Water Act.

Section of the Regulatory Flexibility Act, requires that the Agency assess the impact of rules on small entities. The regulatory definition of Concentrated Animal Feeding Operations promulgated by EPA in 1976 (40 CFR

part 122, appendix B) addresses medium and large operations (300 slaughter cattle, 200 dairy cattle, 750 swine, 150 horses, 3000 sheep or lambs, 16,000 turkeys, 9000 laying hens or broilers, 1500 ducks, or 300 animal units, or more). Therefore, this permit excludes small businesses with operations of less than these numbers of animals, unless specifically designated by the Director. The Director would evaluate these factors as well as potential impacts to water quality of surface waters of the U.S. or significant contributions of pollutants to those waters, in the designation process.

B. Comments on Part I of the General Permit—Coverage and Eligibility

1. From the comments received it is apparent that many persons may be confused about the definition of a Concentrated Animal Feeding Operation as a point source of pollutants requiring an NPDES permit. Some comments questioned if pasture areas were subject to regulation.

The regulatory definition found at 40 CFR 122.23 and part 122 appendix B encompasses all animal operations which have industrial characteristics. The definition "concentrated animal feeding operation" includes the number of animals confined; the length of time the animals are confined at the facility; and the type of the confinement. The definition does not include areas of the facility where crops or forage crops are maintained throughout the growing season. The definition is included in the Part VII. of the general permit.

2. Several comments received voiced disagreement with the appropriateness of the phrase "confined in pasture operations".

Confined in pasture operations represents the restriction of pastured animals by a fence, wall, natural impasse or other such barrier to prevent these animals from free movement off of property or pasture. Confinement of animals on pasture lands are not regulated under this permit. This general permit regulated the pollutants from areas where animals are confined in concentrated situations.

3. Many persons requested that EPA explain the significance of the "Alta Verde" court decision, and how that relates to the exemption from NPDES requirements for those facilities which do not discharge. Some persons believe that the decision in this case removes the incentive for facilities to "over build" to avoid permitting requirements, and therefore, the extra environmental protection of a system that truly never discharges. Several commenters believed that the retention

capacity design to contain the 25 year, 24 hour storm event excluded a facility from NPDES permitting requirements.

It is not within the scope of EPA's authority to determine the significance of the courts ruling in the *Alta Verde* case. In the *Alta Verde* case the courts ruled that a retention structure which was built to retain all runoff from the 25 year, 24 hour storm event was not exempted from obtaining an NPDES permit, and that all discharges from such a facility would be considered in violation unless in compliance with an NPDES permit. Region 6 believes the *Alta Verde* case corroborates the explanation given by Region 6 in the preamble of the proposed permit published July 22, 1992 (57 FR 32475). Where a facility has built a retention system which has the capacity to retain the 25 year, 24 hour storm event, and the facility maintains that capacity properly, any discharges due to the occurrence of extreme rainfall events will not be a violation of the Clean Water Act if those discharges are in compliance with an NPDES permit. The regulations at 40 CFR part 122 appendix B state that if a facility discharges only in the event of the 25 year, 24 hour storm event, then the facility is not considered to be a point source discharger. This means the only discharges which can be discharged without violating the CWA are those in compliance with an NPDES permit, or as a result of the statistical event which happens only about once every 25 years. The Court in *Alta Verde* ruled that the design capacity of the retention structure is irrelevant in determining Clean Water Act jurisdiction. It is not possible for a facility to predict with certainty the design capacity needed to retain the volume from largest secession of chronic rainfall events that may occur between 25 year, 24 hour events (approximately a 25 year period).

4. Many persons requested clarification on whether the definition includes stockyards facilities. These commenters contend that these operations do not generate much wastes and that the requirements in the permit would put an economic hardship on these businesses. Several commenters requested that EPA add the word "consecutive" to the reference to 45 days in the definition. One commenter requested that the definition be changed to include facilities on which animals were fed and maintained for 29 days out of a 12 month period.

The definition requires EPA to regulate facilities through NPDES permitting if animals are on the facility for 45 days or more out of a 12 month period. Region 6 believes strongly that

it is clearly the intent of the regulation to include feedyards and stock yards which have animals maintained and fed for 45 days a year at the facilities. It is irrelevant whether they are the same animals for the 45 day duration, or whether it is a consecutive 45 days. It is beyond the scope of Region 6's authority to amend a promulgated regulation.

5. Many persons and producer groups requested clarification on the terms "continuous flow watering systems" and "liquid manure handling systems" to determine which poultry operations will be subject to permitting under NPDES.

Poultry facilities which have no discharge at all to waters of the U.S. are not point sources under the regulatory definition (40 CFR 122.23 and 122 appendix B) and are not required to obtain NPDES permits. This describes poultry houses which are exclusively under roof, which have no liquid or fluid wastewaters, and which removes or distributes all solid wastes and manure to proper agricultural uses shortly after collection. However, Region 6 believes that facilities which are described in the regulatory definition as a point source, i.e., have a process water discharge, must have an NPDES permit. This includes those facilities which stockpile or land dispose of manure such that rainwater or the adjacent watercourse removes significant amounts of pollutants to waters of the U.S. These facilities have, in fact, established a crude liquid manure handling system and are considered to be point source dischargers if the number of animals confined at the facility meets the regulatory definition of concentrated animal feeding operations.

6. Many persons supported the concept of general permit coverage with the no submittal of a notice of intent to the Director. However, many persons, state and federal agencies expressed concern that EPA would not have a record of the permittees for enforcement of the permit. Many commenters stated that if EPA was not going to track the permittees directly, it should not impose the program and leave CAFO regulation up to the states.

Region 6 agrees that a Notice of Intent is an appropriate tool in confirming which facilities are covered by the terms and conditions of the general permit. Region 6 is including a NOI form as appendix B of the general permit. EPA believes this will enhance the Region's ability to track and enforce the terms of the general permit.

7. Many persons requested that facilities which have applied to Region

6 for an NPDES permit prior to the issuance of the general permit be granted coverage under the permit when it is issued. And, that the coverage extend retroactively back to the date the application was submitted.

In accordance with Part I.B.3. of the general permit facilities which have applied for an NPDES permit will be covered automatically by this permit. However, EPA cannot extend the authority of an NPDES permit into the past and is not able to cover facilities from the time of application. The Clean Water Act requires that any discharge be in accordance with an NPDES permit. This is why a permit application is to be filed 180 days prior to discharging into waters of the U.S.

8. Many comments expressed concern that permit coverage was only for a five year term. Facility owners and bankers stated that it would be impossible for facilities to obtain loans on a facility if its environmental requirements could change in five years. Sections 402(b)(1)(B) of the Clean Water Act and U.S. Code section 1342(b)(1)(B) requires that permits under NPDES be issued for a fixed term not to exceed five (5) years. Federal regulations found at 40 CFR 122.46(a) clearly state that NPDES permits are effective for a fixed term not to exceed 5 years. EPA can require that a permit be renewed more frequently, but cannot extend the duration beyond the 5 years. All NPDES permittees, which include many different categories of industries, have addressed the budgetary concerns of meeting permit limitations which may change after a 5 year term since the inception of the NPDES program in 1972.

9. Several comments were received regarding the coverage of duck facilities after 1974. The commenters felt this only added confusion to the requirements and further, that they had no knowledge of any duck facilities in any of the four states covered by the permit. EPA has reason to believe that there are some duck breeding facilities in the Region. In addition, this general permit will provide requirements for any new facilities which may begin operation in the future.

10. The U.S. Fish and Wildlife Service requested that EPA participate in a meeting to discuss and evaluate environmental impact data gathered by the Fish and Wildlife Service. While being supportive of the general permit, Fish and Wildlife suggested additional permitting requirements to insure the protection of endangered and threatened species and their habitat.

EPA met with and discussed data obtained by the U.S. Fish and Wildlife Service and discussed several

permitting requirements to insure impacts to endangered and threatened species were addressed. Region 6 included several requirements to the final permit to insure compliance with the Endangered and Threatened Species Act. No facility can gain coverage under this general permit if there would be any adverse impacts to an endangered or threatened species or their habitat. Several permit requirements were added in response to comments by several entities and agencies. It was the Best Professional Judgement of EPA that these requirements be included in the permit to insure that all impacts be properly addressed. Among these are: 1. The permittee will immediately report any fish or bird kills to the Fish and Wildlife office nearest to the facility; 2. A site specific rain gauge will be required to establish permit compliance; 3. Notice of intent be required of the facilities to be covered; and 4. The use of pasture or crop lands to "filter" discharges prior to entering a water of the U.S. be allowed as a management practice for those facilities which are in danger of imminent discharge, even in the event of saturated conditions. EPA believes that the conditions of the final permit will be effective in preventing discharges and management practices from affecting fish and wildlife, including endangered species.

11. Many persons were confused with the terms used in the Agency's decision under the National Environmental Policy Act (NEPA); and terms used in the coverage portion of the general permit to describe the requirement of an environmental review prior to coverage for new facilities with Performance Standards for New Pollutant Sources (40 CFR Part 412). The terms commented on were: environmental review; environmental assessment or environmental evaluation; and environmental impact statement.

The term "environmental review" will be included in the permit's definition section to give a regulatory definition of the process the Agency uses in its evaluation under the National Environmental Policy Act. The terms "review", "assessment", and "evaluation" are distinct phases associated with the NEPA process, their meaning being the same as would appear in a common dictionary. However, the following definitions are provided to clarify the terms as used by EPA.

An *environmental review* is defined at 40 CFR 6.101(c) as the process whereby an evaluation of the environmental information provided by the permit applicant is undertaken by EPA to identify and evaluate the related

environmental impacts to determine if there will be an significant impact to the environment from the new facility. The EPA is required by law to conduct this environmental review prior to issuing any permit to a facility with New Source Performance Standards. These standards have been through the regulatory review process and apply to any facility constructed after the standard became a regulation. The Agency is prohibited from permitting any discharge with new source standards unless the review has been done and a finding has been made.

The terms *environmental assessment* and *environmental evaluation* are defined at 40 CFR 6.105(d) as concise public documents for which EPA is responsible and are prepared to provide sufficient data and analysis to determine whether an *Environmental Impact Statement* (EIS) or *Finding of No Significant Impact* (FNSI or FONSI) is required. When the environmental review indicates that there are no significant impacts anticipated or when the project is altered to eliminate any significant adverse impacts, a FNSI shall be issued and made available to the public. The FNSI shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable. The public is allowed to comment on the Agency's finding, and to provide information either supporting the FNSI or to the contrary during the permit public comment period.

The Agency, however, may determine that it must prepare a *Notice of Intent and Environmental Impact Statement*. This process is described at 40 CFR 6.105(e). When the environmental review indicates that a significant impact may occur and significant adverse impacts cannot be eliminated by making changes in the project, a notice of intent to prepare an EIS shall be published in the *Federal Register*. Draft and final EIS shall be prepared and disseminated. The final EIS shall list any mitigation measures necessary to make the alternative environmentally acceptable.

EPA would like to caution operators that the decisions described above must go to Public Notice for a minimum of 30 days prior to a final decision being made. The entire process can take several months to complete. An Environmental assessment and review should be initiated by the permittee several months in advance of constructing a new facility or expansion of a facility to over 100 animal units (part a. of the regulatory definition at 40 CFR part 122 appendix B or, part a. of the regulatory definition that is included in Part VII. of this permit).

12. Many persons commented on the need for an Environmental Impact Statement for discharges from CAFOs. Some comments questioned the need for an Environmental Impact Statement (EIS) indicating that the cost of an EIS would place a severe economic burden on the regulated facilities. Many persons expressed concern that the economic burden would discourage new businesses or expansion of existing businesses.

The Agency is required by law to prepare an EIS where it finds that significant environmental impacts may occur as a result of the new facility. In this case, all CAFOs with 1000 animal units or more (part a. of the regulatory definition that is included in Part VII. of this permit) that have been constructed since February of 1974 are considered to be the "new sources" which have new source performance standards. The EPA is mandated to regulate in accordance with the authority provided to it by Congress and is not authorized to circumvent the law regardless of its economic impact.

13. Some comments expressed disagreement with the Finding Of No Significant Impact which was published with the proposed general permit. Some of these comments cited water quality reports for the Erath and Bosque County areas. The commenters believed that due to the concentration of CAFOs in this area the water quality impacts from discharges from the retainment structures would constitute a significant impact and that CAFOs on the Bosque River Basin watershed should be evaluated in an Environmental Impact Statement. Several letters expressed the opinion that EPA had not sufficiently evaluated the potential impacts in this watershed, and had made judgments based on insufficient study of the known water quality problems in the area. In addition, these commenters stated the opinion that EPA's use of a general permit to regulate all CAFOs was inappropriate. These commenters believe that Erath County, Texas should be excluded from the general permit. It was the stated opinion of these commenters that EPA had not adequately addressed water quality, drinking water aquifers, closure of facilities, and odor control.

While EPA agrees with commenters that animal wastes have had an impact on this watershed (see answer A. 14.), Region 6 believes that the Finding of No Significant Impact is appropriate for the facilities which are already in operation and which will be compliant with the permit requirements. The permit requirements are considered to mitigate for any water quality impacts since the

new source performance standards were developed to insure an environmentally safe discharge and the effluent limits of no discharge take into account the state water quality standards for the receiving stream.

In preparing the proposed permit, a list of possible impacts from CAFO facilities was compiled from various sources to determine the potential environmental impacts from concentrated animal feeding and maintenance operation activities. Among these impacts are: (1) Surface water quality impacts from discharges and the handling of the wastes generated at the site; (2) groundwater impacts caused by seepage from the retention lagoons and over-application of the wastes to land; (3) endangerment to public health by the contamination of drinking water by the animal wastes which are generated at these facilities; (4) public health nuisance caused by odors and the resulting attraction of insects to the area; (5) adverse effects to endangered species and other wildlife by the location or by the land application, disposal, or management of the animal wastes; and (6) air quality impacts from the contribution of methane and other gases which are associated with the management and storage of animal wastes.

These impacts were evaluated in the development phase of writing the draft general permit. The general permit proposed in July included many requirements to mitigate or control the environmental impacts associated with CAFOs. Based on the information mentioned above, the Agency evaluated agricultural information, state water quality inventories and reports, and national information on water quality problems associated with animal waste management. It was the finding of the Environmental Services Division at Region 6, that the conditions of the permit and the effluent guidelines provided adequate requirements to control, or mitigate all significant impacts from Concentrated Animal Feeding Operations which were already constructed and operating.

It is the finding of Region 6 that the most frequent water quality and environmental impacts are those associated with the land disposal of wastes generated by CAFO facilities. EPA has included specific requirements in the proposed permit to regulate the waste disposal activities. Additionally, the environmental assessment indicates that overflows from the wastewater containment can be controlled by frequent removal of concentrated wastewaters and diversion of rain waters. Also, discharges from properly

operated facilities contain significantly less pollutants than a facility which has been improperly operated and wastes have been allowed to accumulate in the retention structure. Region 6 believes that it is the accumulation of wastes which would result in a more concentrated and frequent discharge that would cause environmental damage. The proposed permit includes the necessary mitigation recordkeeping and monitoring to determine if the discharges are in compliance with the permit requirements for proper operation and management.

The Clean Water Act does not give EPA the specific authority to address ground water and facility closure requirements for CAFOs (see answer D.25. for a discussion of the closure requirements). However, Region 6 believes that the pollution prevention and required management practices under the permit are protective of ground water quality. To the extent that there is protection under more stringent State statutes, the permit protects drinking water. The permit provides stringent requirements which are protective of water quality, and at the same time provides EPA with a strong enforcement tool against non-compliance.

Region 6 is aware that these facilities have contributed to significant water quality problems in areas where these facilities are concentrated on a particular watershed. EPA has considered all available information to determine if more stringent permit conditions are needed. Region 6 believes that the water quality impairments in the Bosque River Basin are mostly attributable to non-point sources and non-compliance with the current state program. It is the finding of this Agency that facilities which are operating in compliance with this general permit will not have a significant impact on the environment. It is the determination of this Agency that the permit conditions of "no discharge" coupled with the required best management practices and pollution prevention will be protective of State water quality standards. If facilities covered by this general permit are found to contribute to water quality impairments the permit may be reopened to include more stringent program elements, or the facilities may be required to apply for individual site specific water quality based permits.

14. One commenter requested that EPA place strict siting requirements in the permit which would eliminate all CAFOs in the Region.

EPA does not have the authority to require a six mile separation from all private residences and public buildings

and areas, nor does the Clean Water Act provide the authority to EPA to eliminate business. The authority under which EPA operates, is limited to the regulation of discharges of pollutants to surface waters of the U.S.

15. Many comments were received requesting EPA define such terms as "alternative general permit" "individual permit" and "this general permit" which are used in Part I.D. of the general permit. These terms were in the proposed general permit preamble, fact sheet, and permit. The section of the permit containing the bulk of these terms has been restructured for clarification. EPA regrets any confusion about the regulatory language in this part of the general permit. Where ever the term "this permit" appears it means this general permit which was proposed on July 22, 1992. General permit is a term which describes a permit which is intended to cover a large group of permittees with one permit; this avoids the administrative and resource burdens involved in individual permit issuance. Alternative general permit, alternative NPDES general permit, and individual NPDES permit all refer to a permitting action separate from this general permit which may be required in the vent that coverage by this permit is not adequate.

Simply stated this provision means that EPA has the authority, based on its judgement, to determine the appropriateness of this general permit with regards to any particular facility. If, based on site specific conditions, or water quality concerns, EPA believes that this general permit does not provide adequate requirements, EPA can require the facility to apply for an individual permit, or a different general permit. An application for an individual permit requires site specific information so that a more site specific permit can be developed which addresses the water quality concerns at that individual facility. Or, it may be the determination of EPA that a different general permit would provide more appropriate controls for the facility. If this is the case, the Director could require the facility owner/operator to apply for, and then comply with the other general permit.

C. Comments on Part II of the General Permit—Effluent Limitations

1. Many comments received requested information on the technical information used to develop the Effluent Guidelines for feedlots, and the basis for the application of these guidelines to concentrated animal feeding operations. The information requested is contained in the Development Document for Effluent Limitations and New Source

Performance Standards—Feedlot Point Source Category. Published January 1974. This document is no longer for sale through the U.S. Government Printing Office, but can be reviewed at a Government Repository Library. Most large city libraries, State libraries, and University libraries provide an area for government documents, and as such are Government Repository libraries. In preparation of a permit for feedlots EPA must, at a minimum include the technology requirements established in the effluent guidelines. The effluent guidelines apply to all CAFOs of 1000 animal units or more (feedlots). Region 6, in preparation of the proposed permit, reviewed possible permitting requirements which would be protective of State water quality standards. It was the best professional judgement of EPA that the effluent guidelines would be minimum technology requirement which could be placed in a general permit which would be protective of water quality. Therefore, EPA has applied the effluent guideline technology to all facilities covered under the general permit. While this may appear to some persons to be placing a more stringent requirement on the facilities which have less than 1000 animal units, these smaller facilities have the permitting option of applying for a site specific individual permit. It is the belief of Region 6 that the cost of other treatment options which would be protective of water quality would be more expensive than the requirements in the general permit. It is the opinion of Region 6 that this general permit provides the most cost effective permitting option for facilities under 1000 animal units which are subject to Clean Water Act requirements.

2. Several comments received requested that the terms BAT and BCT be defined in the general permit. BAT, Best Available Technology applies to the control of toxic pollutants and pollutants which are not classified as toxic or conventional pollutants. BAT control of these pollutants is achievable through application of production processes and available methods, systems, and techniques. For this permit the required BAT, as described in 40 CFR 412.13, requires that there be no discharge of process waste water pollutants to navigable waters. The design standard requires the retention of all wastewaters and runoff from a 25 year, 24 hour storm event, and the proper operation and maintenance of the retention capacity. BCT, Best Practicable Control Technology applies to the control of conventional pollutants. The limitations established

in 40 CFR 412.22 define the quality and quantity of pollutants or pollutant properties, which may be discharged by a point source (CAFO) subject to the provisions of this subpart after application of BCT. The BAT requirement of "no discharge" meets all BCT standards for the control of conventional pollutants. EPA has included a definition of these terms in the definition section of the general permit (part VI).

3. Several comments were received requesting a definition of a 25-year, 24-hour storm event. This term is defined in part VII of this final permit. 25-year, 24-hour storm event is defined as 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. This means that this storm event has a probability of occurring once every 25 years and includes the maximum precipitation occurring over a 24 hour period.

4. Several persons requested that EPA define "chronic" or "catastrophic" rainfall events. The terms chronic and catastrophic rainfall appear in the effluent guidelines requirement at 40 CFR part 412.

These refer to events which may result in an overflow of the required retention structure. Catastrophic rainfall conditions would mean any single event which would total the volume of the 25 year, 24 hour storm event. Catastrophic conditions could also include tornados, hurricanes or other catastrophic conditions which could cause overflow due to winds or mechanical damage. Chronic rainfall would be that series of wet weather conditions which would not provide opportunity for dewatering and which total the volume of the 25 year, 24 hour storm event.

5. Several concerned citizens were confused about the required technology established in the National Effluent Guidelines. It is the understanding of these citizens that properly sized facilities should discharge only in the event of the 25 year, 24 hour storm event. The effluent guidelines establish a requirement of "no discharge of process waste water pollutants from the facility". However, the guideline provides for no limitation to be placed on overflows from retention structures which are properly constructed and operated to maintain the capacity of the 25 year, 24 hour storm event. If chronic or catastrophic rainfall cause an

overflow from a facility which has been operated to maintain the required volume capacity, then that overflow is in compliance with effluent guidelines and this permit.

A facility which only discharges in the case of the actual 25 year, 24 hour storm event is excluded from the definition of concentrated animal feeding operation (40 CFR 122.23 and part 122 appendix B) and is, therefore, not considered a point source discharger subject to NPDES permit requirements under the Act.

6. Several commenters were concerned that the National Effluent Standards for CAFOs were more stringent than the State Standards. The Clean Water Act requires that States set water quality standards. Where these state standards are more stringent than the national technology requirements, EPA is required to use the more stringent standard. EPA cannot be less stringent than the national technology standard in the development of NPDES permits. (Also see answers A.4-9.)

7. Several comments received requested a definition of "all process waste water". Process waste water refers to any process generated waste water and any precipitation 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 animal or poultry or direct products (e.g., milk, eggs). Process generated waste water is defined as water directly or indirectly used in the operation of a CAFO for any or all of the following including but not limited to: 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. This definition is included in the definition section of the CAFO general permit, part VII.

8. The U.S. Fish and Wildlife Service submitted comments expressing concern that playa lakes are being used as animal waste retention ponds at many CAFOs in the western U.S. to the detriment of migratory birds which use the same playas for loafing, feeding, and breeding. Many other commenters also questioned the use of playa lakes as retention structures for CAFOs, essentially contending they are waters of the U.S. to which the permit should prohibit discharges. Other commenters disagreed, however, noting that cleaning out a playa lake and building a new retention structure at the same facility would be very costly and probably would not provide any environmental

benefit. One commenter stated the use of a playa lake is more environmentally sound because they are naturally lined with caliche and clay which protects ground water.

There is merit to each of these concerns. Many small playa lakes have historically been used as retention units by CAFOs with varying degree of environmental effect. Some have been rendered unfit for some of the uses which uncontaminated lakes enjoy. Conversely, some may have been improved, i.e., but for their use as a retention basin they would be dry much of the year and thus lack significant value as wildlife habitat. Some may have both adverse and beneficial effects on wildlife. In some instances, moreover, constructing an artificial retention pond to eliminate the use of the playa for wastewater retention might impose a severe economic burden on a CAFO operator without any significant environmental benefit. Wildlife currently attracted to the playa because of the wastewater it contains might well begin frequenting the artificial retention pond.

Moreover, there are difficult jurisdictional issues associated with playa lakes which EPA Region 6 cannot, as a practical matter, resolve in issuing these general permits. In accordance with EPA's regulatory definition of "waters of the U.S. at 40 CFR 122.2, a playa lake is a water of the U.S. if its "use, degradation or destruction could affect interstate or foreign commerce * * *". There are various types of commerce which may be affected by the degradation of many playa lakes, but EPA has to date asserted jurisdiction over them only on a case-by-case basis, generally in the context of enforcement actions. It is fair to say, however, that EPA Region 6 generally regards playa lakes supporting significant migratory bird use to the waters of the U.S.

40 CFR 122.2, however, also excludes "waste treatment systems" from its definition of "waters of the U.S." Although a portion of that regulation prohibits the use of naturally occurring waters from the ambit of the waste treatment system exclusion, that same portion has been stayed since July 1980, when EPA indicated it would "promptly" reconsider issues associated with the prohibition. See 45 FR 48680. Accordingly, a specific playa may be a waste treatment system over which EPA does not assert jurisdiction even though it would otherwise be a water of the U.S. Until the Agency promulgates a regulatory clarification, determining whether or not a specific playa is a water of the U.S. or a waste treatment system is another case-by-case process.

Moreover, because many playas are hydrologically isolated from other waters of the U.S., a *sine qua non* for a waste treatment system, there are many cases in which the jurisdictional issue is a close one.

Because dischargers are responsible for compliance with CWA section 301(a) regardless of whether or not EPA has made a prior determination on the jurisdictional status of a particular receiving water, EPA may occasionally bring an enforcement action for unauthorized discharges to a water body the discharger regarded as its waste treatment system. Although each case must be determined individually, EPA Region 6 may consider the following non-exclusive factors in deciding whether specific playas are treatment systems or waters of the U.S.:

a. *Hydrologic separation.* At a minimum, all waste treatment systems must segregate wastewater from other waters of the U.S., allowing the operator to maintain dominion over the waste prior to its discharge to waters of the U.S. In the case of playas which are naturally segregated from other waters, capacity of the playa thus becomes an important consideration. Using more playa than reasonably necessary for treating or retaining anticipated volumes of wastewater indicates the operator has not attempted to segregate its wastewater from other waters of the U.S., e.g., through construction of a watertight berm across the playa.

b. *Public access and multiple dischargers.* A surface water used or susceptible to use by various parties is rarely a waste treatment system because such use may interfere with or be incompatible with its use as a waste treatment system. Accordingly, a playa over which the discharger cannot or does not exercise exclusive control will generally be regarded as a water of the U.S., not a waste treatment system. It should be noted that discharges are a type of use. Because one wastestream may interfere with another's treatment, a playa receiving more than one entity's discharge is probably no entity's waste treatment system, but a water of the U.S. This might not apply to the case of two CAFOs with the same operations and wastes discharging to the same playa.

c. *Physical modifications.* Physical alteration of a natural playa to improve its ability to function as a waste treatment system provides an indication of waste treatment system status. As a corollary of sorts to the first factor listed above, for instance, increasing the capacity of a playa to accommodate waste treatment needs is a strong indication that the resulting surface

water body is a waste treatment system, not a water of the U.S.

d. *Other waste treatment options.* The existence of a proven, practical, and preferable alternative treatment method for the waste stream at issue militates against a finding that a surface water body is a waste treatment system. Disposal via deep injection well, for example, is a proven method commonly used by onshore oil and gas operators for complying with EPA effluent guidelines applicable to produced water. Hence, EPA would be unlikely to find a playa lake was an oil and gas operator's waste treatment system. In the case of a CAFO, however, surface retention basins may sometimes be the only treatment/disposal option available.

e. *Consistency with state law.* Some states have adopted laws restricting or prohibiting the use of naturally occurring waters as waste treatment systems. If finding a water body is a waste treatment system is inconsistent with such laws, EPA Region 6 will consider it a water of the U.S. A state law or decision to allow use of a natural water body as a waste treatment system is not, however, a determinative factor in an EPA decision on the same issue.

f. *Individual Section 404 permit.* If the U.S. Army Corps of Engineers has issued a permit for the discharge of dredged or fill material to a playa lake incidental to a playa's use as a waste treatment system, EPA Region 6 will probably consider it a waste treatment system. The existence of a nationwide or general permit authorizing such work in a playa, however, will be given little if any weight because neither EPA nor state water quality agencies have an opportunity to consider individual waterbodies in connection with the issuance of such a permit.

EPA reiterates that these factors are neither exclusive nor regulatory; they are simply examples of the sort of factors EPA will probably apply in making individual determinations. Their application in the context of an administrative or judicial enforcement action may thus be challenged in that enforcement action. In an effort to place permittees on notice that discharges to playas may be considered discharges to waters of the U.S., however, EPA has amended the proposed permits' references to "waters of the U.S." by adding exemplary language regarding rivers, streams, lakes, wetlands, and playa lakes.

Even if a specific playa is clearly a waste treatment system, the operators of that system should make every effort to avoid damage to wildlife resources, such as migratory birds. Many migratory

birds protected by the Migratory Bird Treaty Act and/or the Endangered Species Act may frequent surface water bodies, regardless of their jurisdictional status under the Clean Water Act. Harming such protected birds by operating a treatment system may subject the operator to significant criminal liability under those laws.

D. Comments on Part III of the General Permit—Special Conditions, Management Practices, and Other Non-Numeric Limitations

1. Many persons were concerned with the phrase "other than discharges associated with proper operation and maintenance of the CAFO" in Part III.A. Prohibitions. Several comments stated that pesticides should be considered as proper O&M, and that the dilution of pesticides in the ponds would render them harmless. The State of Texas asked if the disposal of "off spec" milk could be discharged to the retention structure.

The Agency wishes to stress that the retention technology with the allowance to overflow in extreme rainfall conditions can only be applied to the wastes associated with the operation and maintenance of a concentrated animal feeding operation. The disposal of other wastes in the ponds would be a violation of the regulatory requirement. The authority for this requirement is established in 40 CFR 122.45(h). The disposal of "off spec" milk is a part of the operation and maintenance of a dairy facility. Also, the use of pesticides, cleansers, disinfectants are common and often necessary to the operation of any animal feeding operation. Region 6 cautions operators to use pesticides judiciously and in accordance with label requirements. Where appropriate the operator should limit the use of pesticides, and use those which are more readily degraded. This could limit pesticide impacts on the environment and limit the need to do expensive pesticide testing if the retention structure should need to discharge. Region 6 does not believe that the dilution of pesticides in the retention structures will render them harmless. Many pesticides are very toxic to fish and wildlife in the parts per trillion range and do not break down readily.

Two examples of activities and wastes which are excluded by this provision are as follows: 1. The introduction of human wastewaters into the retention structure. The discharge and/or land application of materials that are potentially contaminated with human pathogens are covered by regulatory requirements in section 405 of the Clean Water Act. 2. The act of any operator to

accept any outside waste (waste not generated at the CAFO) to be introduced into the retention structure.

2. Several persons commented on the requirement to structurally restrict uncontaminated waters which may run on to the facility. Also many persons question the requirement for the facilities to be protected from flood if located in a floodplain. The Agency believes that unrestricted flow through the facility area would result in unnecessary and unplanned large volumes of water which would have to be retained. The Agency believes this practice would lead to frequent non-compliance. The Agency also believes that the protection from flood waters is consistent with the no discharge requirement for facilities which are located in floodplains. This provision applies to all waste management areas except the land application of wastes as an agricultural practice. Properly applied, animal wastes provide no more environmental risk than chemical fertilizers which would be used on the same land.

3. Several comments received concerned the placement of a waste retention facility near water wells. Many commenters requested EPA reword the requirement to clarify their intent. Several States requested that the distances reflect State health department standards.

EPA has clarified the Best Management Practice referring to the proximity of waste management facilities to water wells. (Part III.B.1.g.) It is EPA's responsibility to include any State requirement which would be more protective of public health in permitting actions. EPA agrees with States that these should be in accordance with the specific distances cited in the State's health codes, therefore, the best management practices restricting the placement of retention and waste handling facilities near public and private water wells has been changed to refer to the State's requirements.

4. Many persons and producer groups, especially groups from States outside Region 6, question EPA's authority to protect ground water in an NPDES permit. Clean Water Act specifically refers to ground water in three sections, however it does not give clear authority to EPA to regulate ground water quality through NPDES permits. Where States have requirements to protect ground water, or specifically refer to them as waters of the State which are to be protected in an approved Water Quality Management Plan, EPA is fully within its authority to protect ground water quality. EPA is authorized by section 301 of the Act include any more

stringent state treatment standard or requirement. Region 6 has not included requirements to specifically protect ground water quality. The permit does, however, protect the sources of surface water from the leakage of pollutants through the unlined retention structures. This requirement along with best management requirements for the proper waste handling and disposal will have the added environmental benefit of providing some ground water protection. The permit also includes provisions which relate to the protection of public health from the contamination of drinking water as reflected in State Standards.

For clarification all mention of ground water protection has been removed from the general permit.

5. Many commenters objected to the requirement of recordkeeping in the general permit. Many people stated that it was too burdensome and that paperwork would not protect the environment. Several persons and producer groups supported some of the required recordkeeping. Specifically, logs of water levels, structural integrity inspections, and logs of manure removal from the facility. Several concerned citizens suggested that facilities should also keep records of all pesticide usage at the facility. Many persons stated the opinion that the recordkeeping requirements be eliminated and be replaced by annual or semi-annual inspections by EPA. Several Commenters believed that the inclusion of BMPs and the requirements in the Pollution Prevention Plan were beyond the scope of EPA's authority.

EPA has simplified and clarified the recordkeeping requirements in the permit. The records required are those which facilities must have to show compliance with the national standards. Many of the record requirements are provided by the USDA Soil Conservation Service. Region 6 does not believe that the recordkeeping required to document all pesticide usage is necessary to protect water quality. The permit requires that the permittee use pesticides in accordance with label requirements. In this was the use has already been regulated by EPA. The permit also requires the permittee to sample all discharges to waters of the U.S. for any pesticide which may be present in the discharge.

Region 6 regulates and permits close to 100,000 permittees. The staff required to do semi-annual inspections at every permitted facility in Region 6 would require a substantial increase to EPA's budget. This expenditure would have to be placed on the taxpayer in order to save the operators of facilities from the

burden of their compliance recordkeeping. EPA does not agree that this is an appropriate use of tax dollars.

The Clean Water Act gives EPA broad authority to develop permit conditions necessary to meet effluent guidelines and water quality standards. Specifically, sections 401(a) (1) and (2) of the Act give EPA authority to prescribe conditions for permits to assure compliance with applicable regulations. Further, EPA has the authority to impose Best Management Practices (BMPs) as permit conditions to ensure that technology-based effluent limitations are properly implemented in permits. Additionally, it is EPA's best professional judgement that the BMPs and pollution prevention requirements are needed in the permit to protect for water quality.

Tracing EPA's statutory and regulatory authority to control wastewater discharges from CAFOs, federal regulations found at 40 CFR 122.44 state that NPDES permits must include technology-based effluent limitations based on limitations promulgated under section 301 of the Clean Water Act. Effluent limitations have been imposed on CAFOs by federal regulations found at 40 CFR part 412. The regulations at 40 CFR 122.44(k) state NPDES permit shall include Best Management Practices to control or abate the discharge of pollutants when numeric effluent limitations are infeasible or these practices are reasonably necessary to achieve effluent limitations and standards or to carry out the intent of the Clean Water Act. The regulations described for CAFOs at 40 CFR part 412 are not expressed as numeric limitations, and are clearly effluent limitations which can be implemented by the use of BMPs. EPA therefore believes that it has authority to require BMPs as a condition of the general CAFO permit and believes BMPs to be the appropriate vehicle for the protection of water quality.

6. Many comments were received requesting a compliance schedule for the development of the plan and compliance with provisions. EPA agrees that the smaller facilities under the general permit will require more time to prepare a plan. Facilities under 1000 animal units must be compliant with this provision as outlined in the schedule in Part III.B.2.a. of the final permit.

7. Many comments received requested that the permit allow Soil Conservation Service animal waste management plans to replace the pollution prevention documentation. Other commenters request that documentation of compliance with the waste management

provisions, retention structure design and construction, and liner determinations from the SCS be considered compliance with the pollution prevention requirements.

The proposed permit contained language which allowed documentation under SCS plans to substitute for parts of the pollution prevention plan. The Agency has amended the permit to include more specific language (in Part III.B.2.) concerning the substitution of SCS documentation/decisions for the permit requirements.

8. A few commenters questioned who would be considered "qualified personnel" for purposes of development of a Pollution Prevention Plan and responsibility for compliance with the provisions and recordkeeping. The owner or operator of the facility is responsible for designating this task to an employee, or doing it themselves. If the task is designated to a person other than the permittee, it is the permittees responsibility to determine the qualifications of the employee to understand and comply with the requirements. This person must be named in the plan.

9. A few persons objected to the requirement that all sampling data be kept on site. Sampling data is part of the permit compliance record of the and must be kept at the facility. EPA does not believe this places any burden on the permittee and allows EPA to evaluate permit compliance.

10. Most commenters were concerned with the requirement to have all of the necessary dewatering equipment "on site". The equipment is expensive and is often shared by several operators in close vicinity of one another. The commenters suggested the language be changed to say "available". Region 6 agrees that the requirement to have the equipment on site would be unnecessarily burdensome to small operations and is not necessary to proper operation and maintenance. The permit language has been changed to reflect the availability of the equipment. However, the permit now requires that the permittee document the availability of the equipment in the Pollution Prevention Plan.

11. Several persons and State agencies commented that the information from the nearest weather station might not accurately reflect the rainfall at the facility. These comments suggest that a rain gauge should be kept on site and the rainfall from any measurable event be recorded and kept with the pollution prevention plan. EPA agrees with the comment and has included the requirement in the final permit.

12. A few commenters asked if the requirement for erosion controls were necessary. These commenters believed this requirement would not result in further environmental protection. Increased sediment entering the pond structures could reduce the storage capacity and could result in noncompliance with the no discharge requirement.

13. Several comments requested that existing facilities be "grandfathered" or exempted from structural requirements, liners, and construction specifications. EPA agrees with commenters that structures which exist and exhibit good maintenance and structural integrity should be exempt from the construction specifications. It is not EPA's intent that these facilities be reconstructed. However, documentation of appropriate retention capacity and liner assessment will be required by all facilities in accordance with the terms of the permit.

14. Some comments requested that the requirement for grass or riprap to stabilize the walls of the retention structures, be changed to allow for other means of stabilization. The comments stated that in very cold or dry conditions grass would not survive and riprap was a very expensive alternative. The commenters stated that other methods could be used to prevent deterioration and that the Agency should allow for this flexibility.

The Agency agrees with this position and has simply required that the structures be stabilized against erosion and deterioration.

15. Several comments note that the design capacity must take into account the volume of wet manure, and suggests that this is too broad a statement. The commenters suggest that this be changed to the volume of manure which will enter the pond. It is the Agency's intent that only the volume of manure which will reasonably be expected to enter the retention structure would have to be accounted for. The language in the final permit has been changed to reflect only the manure to be retained in the structure.

16. Many comments questioned the requirement of liners to protect from hydrologic connection. Many commenters believed that this requirement was to protect ground water. Over most of EPA Region 6 surface water flow is sustained throughout much of the year by ground water inflow. As a result, contaminants which leak from containment structures to the ground water will typically move underground toward local streams and rivers where they will be discharged and affect water quality. EPA has included a liner requirement

specifically where there is potential for pond leakage to impair surface waters. Region 6 strongly believes this is consistent with the effluent guideline requirement of a "no discharge" technology. It is EPA's position that a discharge through the bottom of the retention structure constitutes a violation of the required technology requirement if significant pollutants from that discharge reach a surface water. Also, see answer D.4.

17. Several comments received requested clarification of hydrologic connection, and how this could be documented. Hydrologic connection refers to the interflow and exchange between surface water and ground water. In the context of this permit, the intent of the reduction of hydrologic connection is to reduce ground water as a flow path which would result in the transfer of pollutant materials from CAFO containment structures to surface waters. This definition has been included in the definition section of the CAFO general permit, Part VII. The conditions in the general permit have been simplified to allow a professional determination that hydrological connection does not occur to the degree that surface water contamination would result.

18. Many comments requested that the "liner requirement" apply only to new facilities. The commenters state that these facilities have a "biological seal" which prevents leakage. These persons note studies by Texas A&M which show facilities which are properly maintained seldom leak. EPA agrees that the process of plugging and gleisation may provide appropriate sealing of a pond under certain conditions, however, the permit requires the permittee to have specific documentation on site that a liner is not necessary.

19. Many commenters request that the hydraulic conductivity and thickness requirements (1×10^{-7} , and 1.5 feet) in the permit language change to be consistent with the Soil Conservation Service technical standards for liner construction. EPA agrees with the commenters that the technical determinations made by the SCS or by another professional using SCS Technical Notes 716 and 717 (or the current equivalent technical criteria) would protect for hydrologic connection. These determinations take into account the site specific variables. Additionally, a professional will not design the facility in structurally unstable area or on unstable soils. Where site specific conditions are not assessed by a professional, EPA believes that the more conservative requirement

of 1.5 feet of material compacted to 1×10^{-7} hydraulic conductivity (or its equivalent in an alternate material) is appropriate.

20. Many comments were made on the liner maintenance requirements of liner inspection and monitoring wells. The commenters included many State and Federal agricultural agencies as well as State water quality professionals. The Agency has reevaluated its proposed requirements of liner inspections and monitoring wells. EPA agrees with the agricultural professional that liner inspections would result in structural and biological damage to the liners. This requirement has been removed from the final permit. EPA also agrees with the water quality professionals that the indiscriminate drilling of monitoring wells for every facility could result in the contamination of ground water and drinking water aquifers. EPA also recognizes the States' concern that specific facilities may have the potential to leak and contaminate State waters. The final permit requires only those facilities which have been notified by the State or the Director to install monitoring wells to check for liner integrity.

21. Many commenters were concerned with the concept of agronomic rates, and the requirement that manures and wastewaters must be land applied at rates which consider the nutrient crop uptake. Many comments suggest that the land application be limited to available nitrogen. Many commenters requested a definition of "agronomic rates". Several persons noted the "slow release" nature of manure and requested that we take this into account. EPA agrees with the commenters that plant needs define agronomic rates. It is not EPA's intent to prescribe the specifics of agricultural use of wastes, but to insure that the rates used are consistent with EPA water quality goals and good agricultural practices. Where agricultural practices include high application rates of phosphorus near water bodies which are phosphorus impaired, it is EPA's intent that appropriate cultural practices be used to limit the potential runoff of nutrients.

22. Many commenters stated that manure was more environmentally safe than chemical fertilizers. However, some commenters believed the manure and waste products should be tested for nutrient content. Many comments stated that manure records should be kept in whatever unit of measure the farmer wanted. One commenter asked if weigh tickets would be required with the log of manure hauled away. EPA agrees

that, properly used, manure is a more environmentally favorable fertilizer source than chemical fertilizers. However, it has been the finding that the improper or over application of animal wastes has impaired watersheds in each of the Region's States. EPA believes the removal of large quantities of wastes should be logged only (no weigh tickets are required by the permit). The permit has been changed to allow other appropriate units of measure.

Where the manure is analyzed, this information will be made available to the hauler. EPA will not require that manures and wastes be analyzed, however, the permittee must use appropriate information about the nutrient content of the wastes to determine and document land application rates at the facility.

23. Many persons objected to the requirement that stock piles of manure or land disposal sites would have to be protected from flooding if placed in the 100 year floodplain; and manure was not to be stockpiled near water courses. Many persons believed this restricted the ability of the operator to compost the manures to be used on the field.

Region 6 believes that these requirements are consistent with the no discharge requirement of the national standard. Significant amounts of manure, placed in floodplains and near water courses, could be discharged during rainfall or high water events. The permit requires the permittee protect against such occurrences. Region 6 does not believe this will substantially impair the permittees ability to compost wastes at the facility. The permittee can compost manures in locations away from water courses and transport the composted manure to the field when it is to be land applied.

24. Many concerned persons criticized EPA for not including adequate odor controls in the general permit. EPA's authority under the Clean Water Act does not extend to odor control at these facilities. Region 6 believes that the requirements in the permit do require the best management of the waste products from such facilities, and therefore, will reduce to the maximum extent possible problems which result in excessive odors.

25. Several commenters believed the permit should include requirements for "closure" of a facility. These citizens believe that these facilities constitute an extremely mobile industry and that when environmental regulations tighten, these facilities move to new locations leaving significant wastes behind exposed to runoff.

EPA has no specific authority to regulate the closure of these facilities. However, it should be noted, and the regulated community should be aware that CAFO facilities with over 1000 animal units are considered to "have storm water discharges associated with industry activity". In accordance with regulations published in the *Federal Register* on November 16, 1990 (55 FR 47990 Definition 14) all facilities or inactive sites where significant materials remain exposed to storm water must have a NPDES storm water permit. Therefore, sites vacated by large CAFO facilities will be required to remain permitted until all significant materials are removed.

E. Comments on Part IV of the General Permit—Monitoring and Reporting Requirements

A range of comments were received on the requirement for discharges and overflows from the retention structures to be sampled and analyzed. Some commenters rejected the need for any sampling, many provided information or stated opinions on which parameters should be analyzed, but most commenters questioned the need to test for fecal coliform bacteria. The U.S. Fish and Wildlife Service suggested the discharges be analyzed for metals, pesticide, hormone and antibiotic contamination. The Service also requested that permittees be required to do instream studies to determine if these contaminants were being released.

EPA agrees that the full scope of sampling may not be necessary to track the detrimental effects of a discharge. Additionally, review of State water quality inventories and information from water quality experts indicates that chronic eutrophication in watersheds is related to the improper or over application of wastes and not to the discharge from a properly operated facility. For this reason, Region 6 has included only those chemical parameters which are likely to produce acute effects as the result of a discharge. EPA is also concerned with the protection of human health which relates to the fecal bacteria discharged into the surface water. The parameters which must be analyzed are BOD, TSS, ammonia nitrogen, fecal coliform bacteria, and any pesticide that could reasonably be in the discharge.

EPA must develop permit conditions which satisfy the intent of the Clean Water Act. As described in 40 CFR 122.48, EPA shall specify reporting requirements in permits which are based upon the impact of the regulated activity. Fecal coliforms, excreted in mammalian feces, are clearly a

parameter pertinent and applicable to the "activity" of a confined animal feeding operation.

EPA has included many of the permit requirements suggested by the U.S. Fish and Wildlife Service. Region 6 agrees with Fish and Wildlife that immediate notification will allow the Agency the option to study the impacts of discharges. However, the data which the Service has collected are specific to geographic area and relate to pond sediments (mostly from historical waste management). Where this data may indicate that there are metals present in sediments of particular retention systems, EPA does not believe the body of data which exists at this present time indicates the potential for discharge of significant amount of metals from these facilities under rainfall conditions. EPA is unaware of any approved method to test for hormones or antibiotics in wastewaters. Region 6 believes further data could be gathered in the next five years. If this data indicated metals in discharges from CAFO facilities, EPA can address metals in this permit when it is reissued. The permit already requires that permittees analyze the sample for pesticides which may be in the discharge.

F. Comments on Part V of the General Permit—Standard Permit Requirements

Many persons remarked that several requirements in this part of the permit related to industrial dischargers and do not relate to CAFOs, and these items should be deleted from the final permit to avoid confusion. The Agency agrees with the commenters that much of the standard permitting language is directed at activities not found at a CAFO. Therefore, Region 6 has removed those sections of the standard permitting language which do not pertain to CAFOs. Items for Anticipated Noncompliance, Other Noncompliance Reporting, Bypass of Treatment Facilities, and Upset Conditions have been removed from Part IV. Items regarding Toxic Pollutants and Oil and Hazardous Substance Liability have been removed from Part V.

G. Comments on Part VI of the General Permit—Reopener Clause

The Department of the Interior Fish and Wildlife Service requested that the Agency include in the Reopener that the Agency would undergo a consultation with U.S. Fish and Wildlife if the permit is reopened. EPA is required to work with other regulatory agencies and often consult on permitting actions. It is not necessary to notify the permittee of all administrative activities which are undertaken when permits are reopened,

only the reason the permit may be reopened. Therefore this will not be included in the final permit.

H. Comments on Part VII of the General Permit—Definitions

Many requests were received by EPA on words, term and phrases which the public requested defined or clarified. The Agency has provided clarifications in this responsiveness summary in the responses to comments for that particular section of the permit where the term was used. In addition, EPA has included several definitions to the final general permit. These are: "Agronomic Rates", "Best Available Technology" (BAT), "Best Conventional Technology" (BCT), "Hydrologic connection", "Process wastewater", "Qualified groundwater scientist".

Several persons point out that the term 10-year, 24-hour storm event is never mentioned in the general permit. This term has been deleted from the final general permit.

I. Comments on the Appendices of the General Permit

Most of the persons commenting on the general permit were opposed to the "Recommended Best Management Practices", manure nutrient information, and crop nutrient information that was published with the proposed permit. Many persons believed that more user-friendly and up-to-date information was available through State and Federal agencies which work with the agricultural community.

EPA agrees with the commenters and has removed such information from the final permit. The Agency has replaced it with listings of information sources and agencies to assist operators in the proper operation and management of CAFO facilities, and a listing of publications which were submitted by State and Federal agencies.

Part III. Economic Impact

EPA believes that this general permit will be economically beneficial to the regulated community, in that it provides an economic alternative to the individual application process the facilities covered by this permit would otherwise have to face. The requirements are consistent with those already imposed by effective Federal regulations and State requirements.

An economic analysis was done when the BAT requirements for the national effluent guidelines (40 CFR part 412) were published. Region 6 believes that the same economic and technology rationale would apply to the smaller facilities covered by this permit. Also,

Region 6 believes that this permit is the most economical permitting option available to the smaller facilities with NPDES application requirements. Region 6 has also provided a comparison analysis in the Responsiveness Summary to show the applicability of the 1974 analysis.

If, however, any smaller facilities believe that this economic analysis for the guidelines containment technology would not apply to their facility and that they would be able to achieve necessary water quality requirements of the receiving stream, through the use of biological or equivalent treatment systems, those smaller facilities may apply for individual permit coverage.

Part IV. Compliance With Other Federal Regulations

A. National Environmental Policy Act

Finding of No Significant Impact

To All Interested Government Agencies and Public Groups: Pursuant to the requirements of section 511(c) of the Clean Water Act and the environmental review procedures of the U.S. Environmental Protection Agency (EPA) at 40 CFR part 6, "Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act" for the National Pollutant Discharge Elimination System (NPDES) New Source Program, the EPA has conducted a general environmental review of the following action:

1. *Action.* Issuance of General NPDES Permit for New Source Concentrated Animal Feeding Operations (CAFO), defined in 40 CFR part 122 appendix B and 40 CFR part 412, and located in all parts of the State. The discharge of process wastewater from these facilities is subject to the requirements of 40 CFR 122.23 and 40 CFR part 412, and to the application of the new source performance standards promulgated on February 14, 1974, under the NPDES permit program.

2. *Environmental Effects Generally Associated with CAFOs.* A summary of the potential impacts from CAFOs on the environment and the mitigating affects of the permit requirements were published with the proposed permit (57 FR 32475).

3. *Finding.* On the basis of an additional review of the impacts commonly associated with CAFO operations, information and comments received during the public comment period, and other available information, the EPA has made a final decision that the issuance of the General NPDES Permit will not result in any significant adverse environmental impacts and that

an Environmental Impact Statement (EIS) is not required. This Finding of No Significant Impact (FNSI) covers CAFO facilities in place and operating at the time of issuance of the General Permit. Applicants for CAFO facilities proposed after the issuance of the General Permit shall submit an appropriate EID and undergo environmental review prior to the start of construction. Comments regarding this decision not to prepare an EIS are discussed in the attached Responsiveness Summary.

New CAFO subject to National Effluent Guidelines (40 CFR Part 412) will be required to complete an Environmental Review with the Agency prior to coverage under the permit. New facilities are any CAFO not in operation as of the issuance date of these general permits. These facilities, prior to construction must complete an environmental review with this Agency. The initial form to start the process of an environmental review has been provided in appendix C of the permit. The permittee must have documentation of "No Significant Impact" or a completed Environmental Impact Statement, in accordance with an environmental review conducted by the Agency, as a condition of coverage under the permit. This documentation must be retained on site.

B. Endangered Species Act

The final permits published today will authorize no discharge other than upsets and bypasses, which are relatively infrequent occurrences. Accordingly, EPA Region 6 determines that issuance of these permits is unlikely to adversely affect any listed threatened or endangered species or designated critical habitat. EPA Region 6 has submitted copies of these permits to the U.S. Fish & Wildlife Service. EPA Region 6 consulted the U.S. Fish & Wildlife Service regarding this determination. EPA has addressed all of U.S. Fish & Wildlife Service concerns. Part I of this document outlines changes which were made to the final permit. The Responsiveness Summary in Part II explains the Agency's final permitting decisions with respect to the concerns raised by the U.S. Fish & Wildlife Service.

C. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

D. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this

general permit under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under provisions of the Clean Water Act.

E. 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. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's general permit will generally make the NPDES regulations more flexible and less burdensome for permittees. This permit does not apply to small animal feeding operations unless specifically designated by the Director. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments, if promulgated, and that these general permits, when issued, will not have a significant impact on a substantial number of small entities.

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

Dated: January 5, 1993.

B.J. Wynne,
Regional Administrator.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Concentrated Animal Feeding Operations in the State of Louisiana

[General Permit No.: LAG010000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100-4, the "Act".

Owners and operators of Concentrated Animal Feeding Operations except those sites excluded from coverage in Part I of this permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A copy of this general permit must be kept at the site of the concentrated animal feeding operations.

This permit will become effective on March 10, 1993.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire at midnight, on March 10, 1998.

Signed this fifth day of January, 1993.

Myron O. Knudson, P.E.,
Water Management Director, Region 6.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Concentrated Animal Feeding Operations in the State of New Mexico

[General Permit No.: NMG010000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100-4, the "Act".

Owners and operators of Concentrated Animal Feeding Operations except those sites excluded from coverage in Part I of this permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A copy of this general permit must be kept at the site of the concentrated animal feeding operations.

This permit will become effective on March 10, 1993.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire at midnight, on March 10, 1998.

Signed this fifth day of January, 1993.

Myron O. Knudson, P.E.,
Water Management Director, Region 6.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Concentrated Animal Feeding Operations in the State of Oklahoma

[General Permit No.: OKG010000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100-4, the "Act".

Owners and operators of Concentrated Animal Feeding Operations except those sites excluded from coverage in Part I of this permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A copy of this general permit must be kept at the site of the concentrated animal feeding operations.

This permit will become effective on March 10, 1993.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire at midnight, on March 10, 1998.

Signed this fifth day of January, 1993.
Myron O. Knudson, P.E.,
Water Management Director, Region 6.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Concentrated Animal Feeding Operations in the State of Texas.

(General Permit No.: TXG010000)

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100-4, the "Act".

Owners and operators of Concentrated Animal Feeding Operations except those sites excluded from coverage in Part I of this permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A copy of this general permit must be kept at the site of the concentrated animal feeding operations.

This permit will become effective on March 10, 1993.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire at midnight, on March 10, 1998.

Signed this fifth day of January, 1993.

Myron O. Knudson, P.E.,
Water Management Director, Region 6.

NPDES General Permit for Discharges From Concentrated Animal Feeding Operations

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Part I. Coverage Under This Permit

A. Permit Area

The permit covers all areas administered by Region 6 in the States of Louisiana, New Mexico, Oklahoma and Texas.

B. Coverage and Eligibility

Unless excluded from coverage in accordance with paragraph C or D below, owners or operators of animal feeding operations that are defined in 40 CFR part 122 appendix B as concentrated animal feeding operations, and are subject to the requirements 40 CFR 122.23 are eligible for coverage under this permit.

1. **Existing Facilities.** Owners or operators of existing Concentrated Animal Feeding Operations (CAFOs) are authorized under the terms and conditions of this permit upon the submittal of a Notice of Intent (NOI) ¹ to gain coverage under this permit. Permittees must retain on site a copy of the permit and the pollution prevention plan as required by this permit.

2. **CAFOs With Expired Permits or Pending Applications.** Upon the submittal of a Notice of Intent ¹ all facilities which have expired permits and have reapplied in accordance with 40 CFR 122.21(d); and all facilities which have submitted applications in accordance with 40 CFR 122.21(a) are automatically covered by the terms of this permit. A permittee may request to be excluded from coverage by this permit by applying for an individual permit in accordance with 40 CFR 122.28(b)(3)(iii).

3. **New Facilities.** Owners or operators of new Concentrated Animal Feeding

¹ The Notice of Intent Form is included in this permit as appendix B.

Operations (CAFOs) are authorized under the terms and conditions of this permit upon the submittal of a Notice of Intent ¹ to gain coverage under this permit. The owner or operator of a new CAFOs must submit a Notice of Intent five (5) business days prior to any discharge from the Concentrated Animal Feeding Operation. Permittees must retain on site a copy of the permit and the pollution prevention plan as required by this permit. Additional requirements for new facilities are as follows:

a. **Requirements for New CAFOs** with more than the number of animals specified in 40 CFR part 122 appendix B(a) ² (or definition 7.a. of this permit). New Concentrated Animal Feeding Operation facilities subject to National Effluent Guidelines (40 CFR part 412) shall, prior to constructing, complete the form provided in appendix C of this permit. The form must be sent to: Mr. Hector Pena (6E-FF), U.S. EPA Region 6, 1445 Ross Ave., Suite 1200, Dallas, Texas 75202.

b. The permittee shall have documentation of "No Significant Impact" or a completed Environmental Impact Statement, in accordance with an environmental review conducted by this Agency, as a condition of coverage under this permit. This documentation shall be obtained and retained on site prior to the submittal of the Notice of Intent.

4. **Expanding Facilities.** ² Facilities intending to expand operations to more than the number of animals specified in 40 CFR part 122 appendix B(a) (or definition 7.a. of this permit) will be subject to 40 CFR part 412 and will be required, prior to construction of the expansion, to submit a new notice of intent and to complete the form provided in appendix C of this permit. The form must be sent to the address in paragraph I.B.3.a (above). The permittee shall have documentation of "No Significant Impact" or a Completed Environmental Impact Statement, in accordance with an environment review conducted by this Agency, as a condition of coverage under this permit. This documentation shall be obtained and retained on site prior to the submittal of the notice of intent.

5. **Other Animal Feeding Operations.** All other animal feeding operation are encouraged to comply with the terms and conditions of this permit.

² The provisions in Part I.B.3.a.4. are requirements of Federal programs under the National Environmental Policy Act of 1969 and will not apply to such facilities once authority for the NPDES program has been assumed by the state agency.

C. Limitations on Coverage

The following discharges from Concentrated Animal Feeding Operations (CAFOs) are not covered by this permit:

1. Concentrated Animal Feeding Operations that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard, and which have been notified by the Director to file for an individual or alternative general permit in accordance with part I.D. (below) of this permit.
2. Concentrated Animal Feeding Operations which adversely affects a listed or proposed to be listed endangered or threatened species or its critical habitat.
3. Concentrated Animal Feeding Operations which adversely affects properties listed or eligible for listing in the National Register of Historic Places.
4. Concentrated Animal Feeding Operations that discharge all their runoff and wastewater to a publicly owned sanitary sewer system which discharges in accordance with an NPDES permit.
5. Concentrated Duck feeding operations established prior to 1974.

D. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and obtain either an individual NPDES permit or an alternative NPDES general permit as provided in 40 CFR 122.28(b)(2)(i). The Director will notify the owner or operator in writing that a permit application is required. If an owner or operator fails to submit in a timely manner an individual NPDES permit application required by the Director, then the applicability of the general permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

2. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit as provided in 40 CFR 122.28(b)(2)(iii). The owner or operator shall submit an individual application (Form 1 and Form 2B) to the Director with reasons supporting the request.

3. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit, or the owner or operator is approved for coverage under an alternative NPDES general permit, the applicability of this permit to the facility is automatically terminated on the effective date of the

individual permit or on the date of approval for coverage under the alternative general permit. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the permittee is automatically reinstated under this permit on the date of such denial, unless otherwise specified by the Director.

E. Notification Requirements

1. Owners or operators of facilities authorized by this permit shall submit a Notice of Intent (NOI) to be covered to the Director. The form for the Notice of Intent for this permit is in appendix B of this permit. Notifications must be made within 90 days of issuance of this permit or upon completion of new facility. The Notice of Intent Form (or photocopy thereof) shall be signed by the owner or other signatory authority in accordance with Part VI.I. (Signatory Requirements), and a copy shall be retained on site in accordance with Part VI.D. (Retention of Records) of this permit. The address for Notice of Intent submission to EPA is:

U.S. EPA Region 6,
6W—EA General Permits,
P.O. Box 50625,
Dallas, Texas 75270.

2. A copy of the Notice of Intent must also be sent to the state agency where the Concentrated Animal Feeding Operation is located:

Louisiana: Gary Aydele, Administrator,
Water Pollution Control Division,
State of Louisiana, Dept. of
Environmental Quality, P.O. Box
82215, Baton Rouge, LA. 70884-2215

Texas: Texas Water Commission,
Agriculture Department, P.O. Box
13087, Austin, TX. 78711-3087

Oklahoma: State of Oklahoma,
Department of Agriculture, 2800 N.
Lincoln Blvd., Oklahoma City, OK.
73105-4298

New Mexico: Chief, Water Quality
Bureau, New Mexico Environmental
Department, 1190 St. Francis Blvd.,
P.O. Box 26110, Santa Fe, NM. 87502

F. Permit Expiration

Coverage under this permit will expire five (5) years from the date of issuance. The conditions of an expired permit continues in force until the effective date of a new permit (40 CFR 122.6).

Part II. Effluent Limitations

A. Discharge Limitations For All Categories Other Than Duck Facilities Established Prior to 1974

1. The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a Concentrated Animal Feeding Operation in compliance with this permit after application of the best available technology economically achievable or new source performance standards: There shall be no discharge of process waste water pollutants to waters of the U.S. (including lakes, rivers, streams, wetlands and playa lakes as defined in 40 CFR 122.2) except in accordance with Part II.B. of this permit.

2. Limitations established for concentrated duck feeding operations which began operations after the establishment of New Source Performance Standards in 1974 are subject to the new source performance standard: There shall be no discharge of process waste water pollutants to waters of the U.S. (including streams, rivers, lakes, wetlands, and playa lakes as defined in 40 CFR 122.2) except as specified in Part II.B. of this permit.

B. Releases in Excess of the 25 year, 24-hr Storm Event

Process waste pollutants in the overflow may be discharged to waters of the U.S. whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25-year, 24-hour rainfall event for the location of the point source. There shall be no effluent limitations on discharges from detention structures constructed and maintained to contain the 25 year, 24 hour storm event if the discharge is the result of a rainfall event which exceeds the design capacity and proper maintenance. Retention structures shall contain all process wastewaters plus the 25 year, 24 hour storm event.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition on Unauthorized Substances

All discharges to containment structures shall be composed entirely of wastewaters from the proper operation and maintenance of a Concentrated Animal Feeding Operation and the precipitation from the animal feeding operation areas. The disposal of any

materials (other than discharges associated with proper operation and maintenance of the CAFO) into the containment structures are prohibited by this permit.

B. Proper Operation and Maintenance Requirements

The facilities covered by this permit are required to document the attainment of Best Available Technology (BAT) and Best Conventional Technology (BCT), and all Best Management Practices (BMPs) used to comply with the effluent limitations in this permit. Such documentation shall be included in the Pollution Prevention Plan (PPP) outlined in Part III.B.2. of this permit and shall be made available to the Director upon request. Where applicable, equivalent measures contained in a site specific Animal Waste Management Plan prepared by the U.S. Department of Agriculture Soil Conservation Service (SCS), may be substituted for the Best Management Practices and Pollution Prevention Plan requirements in this Part of the permit. Where provisions in the Soil Conservation Service plan are substituted for applicable Best Management Practices or portions of the Pollution Prevention Plan, the Pollution Prevention Plan must refer to the appropriate section of the Soil Conservation Service plan. If the pollution prevention plan contains reference to the Soil Conservation Service plan, a copy of the Soil Conservation Service plan must be kept on site.

1. **Best Management Practices.** The following Best Management Practices (BMPs) shall be utilized by concentrated animal feeding operations owners/operators, as appropriate, based upon existing physical and economic conditions, opportunities and constraints. Where the provisions in a Soil Conservation Service plan are equivalent or more protective the permittee may refer to the Soil Conservation Service plan as documentation of compliance with the Best Management Practices required by this permit.

a. Control facilities must be designed, constructed, and operated to contain all process generated wastewaters and the contaminated runoff from a 25-year, 24-hour rainfall event for the location of the point source. Calculations may also include allowances for surface retention, infiltration, and other site specific factors. Waste control facilities must be constructed, maintained and managed so as to retain all contaminated rainfall runoff from open lots and associated areas, process

generated wastewater, and all other wastes which will enter or be stored in the retention structure.

b. Facilities shall not expand operations, either in size or numbers of animals, prior to amending or enlarging the waste handling procedures and structures to accommodate any additional wastes that will be generated by the expanded operations.

c. Open lots and associated wastes shall be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures designed to carry peak flows expected at times when the 25 year, 24-hr. rainfall event occurs.

d. New facilities shall not be built in a water of the U.S. (including streams, rivers, lakes, wetlands, and playa lakes as defined in 40 CFR 122.2).

e. No waters of the U.S. shall come into direct contact with the animals confined on the Concentrated Animal Feeding Operation. Fences may be used to restrict such access.

f. Wastewater retention facilities or holding pens may not be located in the 100-year flood plain unless the facility is protected from inundation and damage that may occur during that flood event.

g. There shall be no water quality impairment to public and neighboring private drinking water wells due to waste handling at the permitted facility. Facility wastewater retention facilities, holding pens or waste/wastewater disposal sites shall not be located closer to public or private water wells than the distances specified by State regulations or health codes or State issued permits for that facility.

h. Waste handling, treatment, and management shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or contribute to the taking of endangered or threatened species of plant, fish or wildlife.

i. Waste handling, treatment, and management shall not create an environmental or a public health hazard; shall not result in the contamination of drinking water; shall conform with State guidelines and/or regulations for the protection of surface water quality.

j. Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent significant pollutants from being discharged to waters of the United States.

k. The operator shall prevent the discharge of pesticide contaminated waters into waters of the United States. All wastes from dipping vats, pest and

parasite control units, and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent any significant pollutants from entering the waters of the United States.

l. Dead animals shall be properly disposed of within three (3) days unless otherwise provided for by the Director. Animals shall be disposed of in a manner to prevent contamination of surface waters of the United States or create a public health hazard.

m. Collection, storage, and disposal of liquid and solid waste should be managed in accordance with recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site shall be secondary to the proper disposal of waste and wastewater.

n. Appropriate measures necessary to prevent spills and to clean up spills of any toxic pollutant shall be taken. Where potential spills can occur materials handling procedures and storage shall be specified. Procedures for cleaning up spills shall be identified and the necessary equipment to implement a cleanup shall be available to personnel.

o. Special requirements for discharges through municipal separate storm sewer systems serving a population of 100,000 or more. Facilities discharging through a municipal separate storm system serving a population of 100,000 population or more shall comply with applicable requirements in the municipality's storm water management program. Concentrated Animal Feeding Operation facilities must comply with the requirements in the municipal storm water management program developed under an NPDES permit issued for the discharge of the municipal separate storm sewer system that receives the CAFO facility's discharge, provided the operator of the CAFO has been notified of such conditions.

2. **Pollution Prevention Plans.** A pollution prevention plan shall be developed for each facility covered by this permit. Pollution prevention plans shall be prepared in accordance with good engineering practices and should include measures necessary to limit pollutants in runoff. The plan shall describe and ensure the implementation of practices which are to be used to assure compliance with the limitations and conditions of this permit. The plan shall identify a specific individual(s) at the facility who is responsible for developing the implementation, maintenance, and revision of the pollution prevention plan. The activities

and responsibilities of the pollution prevention personnel should address all aspects of the facility's pollution prevention plan.

a. Where a Soil Conservation Service plan³ has been prepared for the facility, the pollution prevention plan may refer to the Soil Conservation Service plan when the Soil Conservation Service plan documentation contains equivalent requirements for the facility. When the permittee uses a Soil Conservation Service plan as partial completion of the pollution plan, the Soil Conservation Service plan must be kept on site. Design and construction criteria developed by the Soil Conservation Service can be substituted for the documentation of design capacity and construction requirements Part III D.2.f. of the Pollution Prevention Plan provided the required inspection logs and water level logs (sections f(2)(A) and f(2)(D) respectively) are kept with the Soil Conservation Service plan. Waste management plans developed by the Soil Conservation Service can be substituted for the documentation of application rate calculations in sections f(2)(H) and (I).

b. Unless otherwise directed by the permitting authority: Large facilities (those with 1000 animal units or more) shall have on site and implement a Pollution Prevention Plan or its equivalent within 365 days (1 year) of the issuance date of this permit. Medium facilities (those with less than 1000 animal units but with 300 or more) shall have on site and implement a Pollution Prevention Plan or its equivalent within two (2) years of the issuance date of this permit. Small facilities (those under 300 animal units which have been designated by the Director as a point source) shall have on site and implement a Pollution Prevention Plan or its equivalent within three (3) years of the designation by the Director. New facilities shall have and implement a Pollution Prevention Plan or its equivalent prior to the submission of a Notice of Intent to be covered by this permit.

c. The plan shall be signed by the owner or other signatory authority in accordance with part IV.I. (Signatory Requirements), and be retained on site in accordance with part IV.D. (Retention

of Records) of this permit. The plan shall be updated as appropriate.

d. If the plan is reviewed by the Director, or authorized representative, the Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. After such notification from the Director, or authorized representative, the permittee shall make changes to the plan within 90 days after such notification unless otherwise provided by the Director.

e. The permittee shall amend the plan prior to any change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States or if the pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in discharges from Concentrated Animal Feeding Operations. Amendments to the plan may be reviewed by the Director or authorized representative.

f. The plan shall include, at a minimum, the following items:

(1) *Description of Potential Pollutant Sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add pollutants to runoff from the facility. Each plan shall identify activities and materials which may potentially be pollutant sources. Each plan shall include:

(A) A site map, or topographic map indicating, an outline of the drainage area of the concentrated animal feeding area; each existing structural control measure to reduce pollutants in wastewater and precipitation runoff; and surface water bodies.

(B) A list of significant materials that are used, stored or disposed of at the Concentrated Animal Feeding Operation (such as pesticides, cleaning agents, fuels etc.). And a list of any significant spills of these materials at the facility after the issuance date of this permit, or for new facilities, since date of operation.

(C) All existing sampling data.

(2) *Waste Management Controls.* The Pollution Prevention Plan for each facility shall include a description of management controls appropriate for the facility, and the permittee must implement such controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants at the facility.

(A) The plan shall include the location and a description of existing structural and non-structural controls. Structural controls shall be inspected at least four times per year for structural

integrity and maintenance. The plan shall include dates for inspection of the retention facility, and a log of the findings of such inspections.

(B) *Retention Capacity Calculations.* The plan must include documentation of existing retention facility capacity and the assumptions and calculations used in determining the appropriate volume capacity. The retention capacity shall be based upon the 25-year 24-hour rainfall event and the facility design should include a top freeboard of two feet and in no case less than one foot. Retention facilities shall be sized based upon the following volumes:

(i) The runoff volume from open lot surfaces plus

(ii) The runoff volume from areas between open lot surfaces and the retention facilities plus

(iii) The rainfall multiplied by the area of the retention facility and wastes basin plus

(iv) The volume of rainfall from any roofed area that is directed into the retention facilities plus

(v) All wastes and process generated wastewater produced during a period of time not less than 21 days or the amount specified in the State Water Quality Management Plan including: (1) Volume of wet manure that will enter pond plus; (2) volume of water used for manure/waste removal plus; (3) volume of cleanup/washwater plus; (4) other water such as drinking water that enters the retention facilities.

Where appropriate, site specific information should be used to determine retention capacity and land application rates. All site specific information used must be documented in the Pollution Prevention Plan.

(C) *Retention Facility Embankments.* The plan shall include a description of the design standards for the retention facility embankments. The following minimum design standards are required for construction and/or modification of a retention facility: Soils used in the embankment shall be free of foreign material such as trash, brush, and fallen trees. The embankment shall be constructed in lifts or layers no more than six inches thick and compacted at optimum moisture content. Site specific variation in embankment construction must be accompanied by compaction testing, certification by a Professional Engineer, or be in accordance with Soil Conservation Service design standards. Compaction tests must be certified by a Professional Engineer. All embankment walls shall be stabilized to prevent erosion or deterioration.

(D) *Retention Facility Dewatering.* The plan must include a schedule for liquid

³ SCS Waste Management Plans which have been prepared since January 1, 1989 are considered by the Soil Conservation Service to contain adequate management practices. To insure the protection of water quality, the Soil Conservation Service has determined that SCS plans prepared prior to 1989 must be renewed with the Soil Conservation Service or waste management professional before December 1995. SCS has determined that all plans should be reviewed every five (5) years to insure proper management of wastes.

waste removal. A date log indicating weekly inspection of wastewater level in retention facility, including specific measurement of wastewater level will be kept with the plan. Retention facilities shall be equipped with either irrigation or evaporation or liquid removal systems capable of dewatering the retention facilities. Operators using pits, ponds, or lagoons for storage and treatment of storm water, manure and process generated wastewater, including flush water waste handling systems, shall maintain in their wastewater retention facility sufficient freeboard to contain rainfall and rainfall runoff from a 25-year rainfall event. The operator shall restore freeboard for a 25-year rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces such freeboard, weather permitting. Equipment capable of dewatering the wastewater retention structures of waste and/or wastewater shall be available whenever needed to restore the freeboard required to accommodate the rainfall and runoff resulting from the 25-year rainfall event.

(E) A permanent marker (measuring device) shall be maintained in the wastewater retention facilities to show the volume required for a 25-year rainfall event within the containment ponds. The marker shall be visible from the top of the levee.

(F) A rain gauge shall be kept on site and properly maintained. A log of all measurable rainfall events shall be kept with the Pollution Prevention Plan.

(G) Concentrated animal feeding operations constructing a new or modifying an existing wastewater retention facility shall insure that all construction and design is in accordance with good engineering practices. Where site specific variations are warranted, the permittee must document these variations and their appropriateness to the plan. Existing facilities which have been properly maintained and show no signs of structural breakage will be considered to be properly constructed. Structures built in accordance with site specific Soil Conservation Service plans and specifications will be considered to be in compliance with the design and capacity requirements of this permit if the site specific conditions are the same as those used by the Soil Conservation Service to develop the plan (numbers of animals, runoff area, wastes generated, etc.). All retention structure design and construction shall, at a minimum, be in accordance with the technical standards developed by the USDA Soil Conservation Service. The permittee

must use those standards that are current at the time of construction.

(H) *Liner Requirement.* The permittee shall include in the plan, site specific documentation that no significant hydrologic connection exists between the contained wastewater and surface waters of the United States. Where the permittee cannot document that no significant hydrologic connection through ground water exists, the ponds, lagoons and basins of the retention facilities must have a liner which will prevent the potential contamination of surface waters.

(i) *Documentation of No Liner Requirement.* The permittee can document lack of hydrologic connection by either: (1) Documenting that there will be no significant leakage from the retention structure; or (2) documenting that any leakage from the retention structure would not migrate to surface waters. This documentation should be certified by a Professional Engineer or qualified groundwater scientist and must include information on the hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the wetted perimeter.

For documentation of no significant leakage, in-situ materials must, at a minimum, meet the minimum criteria for hydraulic conductivity and thickness described below. Documentation that leakage will not migrate to a surface water must include maps showing ground water flow paths, or that the leakage enters a confined environment. A written determination by an SCS engineer, a Professional Engineer, or qualified groundwater scientist that a liner is not needed to prevent leakage of significant amounts of pollutants into surface waters via perched or ground waters will be considered documentation that no significant hydrologic connection exists.

(ii) *Liner Construction.* Site-specific conditions should be considered in the design and construction of liners. Soil Conservation Service liner requirements or liners constructed and maintained in accordance with Soil Conservation Service design specifications in Technical Note 716 (or its current equivalent) shall be considered to prevent hydrologic connection which could result in the contamination of surface waters. Liners for retention structures should be constructed in accordance with good engineering practices. Where no site-specific assessment has been done by a Soil Conservation Service, Professional Engineer, or qualified groundwater scientist the liner shall be constructed to have hydraulic conductivities no greater

than 1×10^{-7} cm/sec, with a thickness of 1.5 feet or greater or its equivalency in other materials.

(iii) *Liner Maintenance.* Where a liner is installed to prevent hydrologic connection the permittee must maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from animals by fences or other protective devices. No trees shall be allowed to grow within the potential distance of the root zone. Any mechanical or structural damage to the liner will be evaluated by a Soil Conservation Service engineer, Professional Engineer, or qualified groundwater scientist within 30 days of the damage. Documentation of liner maintenance shall be kept with the Pollution Prevention Plan. The permittee shall have a Soil Conservation Service engineer, Professional Engineer, or qualified groundwater scientist review the documentation and do a site evaluation every five years. If notified by the State or the Director that the potential exists for the contamination of surface waters or drinking water, the permittee shall install a leak detection system or monitoring wells in accordance with that notice. Documentation of compliance with the notification must be kept with the Pollution Prevention Plan, as well as all sampling data. Data from the monitoring wells must be kept on site for three years with the pollution prevention plan. The first year's sampling shall be considered the baseline data and must be retained on site for the life of the facility.

(I) *Wastewater Removal and Land Application.* Retention facilities shall be equipped with either irrigation or evaporation systems capable of dewatering the retention facilities, or a regular schedule of wastewater removal by contract hauler. The Pollution Prevention Plan must include all calculations, as well as, all factors used in determining land application rates, acreage, and crops. Land application rates must take into account the nutrient contribution of any land applied manures. If land application is utilized for disposal of wastewater, the following requirements shall apply:

(i) The discharge or drainage of irrigated wastewater is prohibited where it will result in a discharge to water of the U.S.

(ii) When irrigation disposal of wastewater is used, facilities shall not exceed the nutrient uptake of the crop coverage or planned crop planting with any land application of wastewater and/or manure. Land application rates of wastewaters should be based on the available nitrogen content, however,

where local water quality is threatened by phosphorus, the permittee should limit the application rate to the recommended rates of available phosphorus for needed crop uptake and provide controls for runoff and erosion as appropriate for site conditions.

(iii) Wastewater shall not be irrigated when the ground is frozen or saturated or during rainfall events (unless to filter wastewaters from retention structures which are going to overflow directly to a water of the U.S.).

(iv) Irrigation practices shall be managed so as to reduce or minimize ponding or puddling of wastewater on the site, contamination of ground or surface water, and the occurrence of nuisance conditions such as odors and flies.

(v) It shall be considered "Proper Operation and Maintenance" for a facility which has been properly operated, and that is in danger of imminent overflow due to chronic or catastrophic rainfall, to discharge wastewaters to land application sites for filtering prior to discharging to waters of the U.S.

(vi) Facilities including ponds, pipes, ditches, pumps, diversion and irrigation equipment shall be maintained to insure ability to fully comply with the terms of this permit and the pollution prevention plan.

(vii) Adequate equipment or land application area shall be available for removal of such waste and wastewater as required to maintain the retention capacity of the facility for compliance with this permit.

(viii) Disposal of wastewaters shall not cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife; nor shall such disposal interfere with or cause harm to migratory birds. The operator shall notify the appropriate fish and wildlife agency in the event of any significant fish, wildlife, or migratory bird/endangered species kill or die-off on or near retention ponds or in fields where waste has been applied, and which could reasonably have resulted from waste management at the facility.

(ix) Where land application sites are isolated from surface waters and no potential exists for runoff to reach a water of U.S., application rates may exceed nutrient crop uptake rates as provided in an approved state program. No land application under this section shall cause or contribute to a violation of water quality standards.

(j) *Manure and Pond Solids Handling and Land Application.* Storage and land application of manure shall not cause a discharge of significant pollutants to waters of the United States or cause a

water quality violation in waters of the United States. At all times, sufficient volume shall be maintained within the control facility to accommodate manure, other solids, wastewaters and rain waters (runoff) from the concentrated animal feeding areas.

(i) Where the permittee decides to land apply manures and pond solids that plan shall include: (1) a description of waste handling procedures and equipment availability; (2) the calculations and assumptions used for determining land application rates; and (3) any nutrient analysis data if laboratory analysis is done. Land application rates of wastes should be based on the available nitrogen content of the solid waste. However, where local water quality is threatened by phosphorus, the application rate should be limited to the recommended rates of available phosphorus for needed crop uptake and provide controls for runoff and erosion as appropriate for site conditions.

(ii) If the waste (manure) is sold or given to other persons for disposal, the permittee must maintain a log of: date of removal from the feedlot; name of hauler; and amount, in wet tons, dry tons or cubic yards, of waste removed from the feedlot. (Incidental amounts, given away by the pick-up truck load, need not be recorded.) Where the wastes are to be land applied by the hauler, the permittee must make available to the hauler any nutrient sample analysis from that year.

(iii) The procedures documented in the pollution prevention plan must ensure that the handling and disposal of wastes comply with the following requirements:

(a) Adequate manure storage capacity based upon manure and waste production and land availability shall be provided. Storage and/or surface disposal of manure in the 100-year flood plain or near water courses is prohibited unless protected by adequate berms or other structures. The land application of wastes at agricultural rates shall not be considered surface disposal in this case and is not prohibited.

(b) Runoff from manure storage piles must be retained on site.

(c) Waste shall not be applied to land when the ground is frozen or saturated or during rainfall events.

(d) Waste manure shall be applied to suitable and at appropriate times and rates. Discharge (run-off) of waste from the application site is prohibited. Timing and rate of applications shall be response to crop needs, assuming usual nutrient losses, expected precipitation and soil conditions.

(e) Disposal of manure shall not cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife; nor shall such disposal interfere with or cause harm to migratory birds. The operator shall notify the appropriate fish and wildlife agency in the event of a fish, wildlife, or migratory bird/endangered species kill or die-off on or near retention ponds or in fields where waste has been applied.

(f) All necessary practices to minimize waste manure transport to water courses shall be utilized and documented to the plan.

(g) Edge-of-field, grassed strips shall be used to separate water courses from runoff carrying eroded soil and manure particles. Land subject to excessive erosion shall be avoided.

(h) Where land application sites are isolated from surface waters and no potential exists for runoff to reach a water of the U.S., application rates may exceed nutrient crop uptake rates as provided in an approved state program. No land application under this section shall cause or contribute to a violation of water quality standards.

(3) *Preventive Maintenance.* The plan shall include an appropriate schedule for preventative maintenance. Operators will provide routine maintenance to their control facilities in accordance with schedule and plan of operation to ensure compliance with this permit. The permittee shall keep a maintenance log documenting that preventative maintenance was done. A preventive maintenance program shall involve inspection and maintenance of all runoff management devices (cleaning separators, catch basins) as well as inspecting and testing facility equipment and containment structures to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

(4) *Sediment and Erosion Prevention.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to waters of the U.S. the Pollution Prevention Plan shall identify measures used to limit erosion and pollutant runoff.

(5) *Employee Training.* Where employees are responsible for work activities which relate to permit compliance, those employees must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and waste disposal. Employee training shall inform personnel at all

levels of responsibility of the general components and goals of the pollution prevention plan. Training shall include topic as appropriate such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary recordkeeping requirements, and spill response and clean up. The permittee is responsible for determining the appropriate training frequency for different levels of personnel and the pollution prevention plan shall identify periodic dates for such training.

(6) *Inspection and Recordkeeping.* The operator or the person named in the pollution prevention plan as the individual responsible for drafting and implementing the plan shall be responsible for inspections and recordkeeping.

(A) *Recordkeeping and Internal Reporting Procedures.* Incidents such as spills, or other discharges, along with other information describing the pollution potential and quantity of the discharge shall be included in the records. Inspections and maintenance activities shall be documented and recorded. These records must be kept on site for a minimum of three years.

(B) *Visual Inspections.* The authorized person shall inspect designated equipment and facility areas. Material handling areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. A follow-up procedure shall be used to ensure that appropriate action has been taken in response to the inspection.

(C) *Site Inspection.* A complete inspection of the facility shall be done and a report made documenting the findings of the inspection made at least once/year. The inspection shall be conducted by the authorized person named in the pollution prevention plan, to verify that the description of potential pollutant sources is accurate; the drainage map has been updated or otherwise modified to reflect current conditions; and the controls outlined in the pollution prevention plan to reduce pollutants are being implemented and are adequate. Records documenting significant observation made during the site inspection shall be retained as part of the pollution prevention plan. Records of inspections shall be maintained for a period of three years.

3. *Other Legal Requirements.* No condition of this permit shall release the permittee from any responsibility or requirements under other statutes or regulations, Federal, State or local.

Part IV. Monitoring and Reporting Requirements

A. Discharge Notification

If, for any reason, there is a discharge to a water of the U.S., the permittee is required to make verbal notification to EPA at (214) 655-6593, and to notify the Director and the State in writing within 14 working days of the discharge from the retention facility. In addition the permittee shall document the following information to the pollution prevention plan within 14 days of becoming aware of such discharge:

1. A description and cause of the discharge, including a description of the flow path to the receiving water body. Also, an estimation of the flow and volume discharged.

2. The period of discharge, including exact dates and times, and, if not corrected the anticipated time the discharge is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the discharge.

3. If caused by a precipitation event(s), information from the onsite rain gauge concerning the size of the precipitation event.

4. Unless otherwise directed by the permitting authority: Large facilities (those with 1000 animal units or more) shall sample and analyze all discharges from retention facilities. Medium facilities (those with less than 1000 animal units but with 300 or more) shall sample and analyze all discharges, but at a maximum required frequency of once/year. Small facilities (those under 300 animal units which have been designated by the Director as a point source) shall sample and analyze all discharges, but at a maximum required frequency of once per permit term. Sample analysis shall be documented to the Pollution Prevention Plan.

5. Samples shall consist of grab samples taken from the over-flow or discharges from the retention structure. A minimum of one sample shall be taken from the initial discharge (within 30 minutes). The sample shall be taken and analyzed in accordance with EPA approved methods for water analysis listed in 40 CFR part 136. Measurements taken for the purpose of monitoring shall be representative of the monitored discharge.

6. Sample analysis of the discharge must, at a minimum, include the following: Fecal Coliform bacteria; 5-day Biochemical Oxygen Demand (BOD₅); Total Suspended Solids (TSS); ammonia nitrogen; and any pesticide which the operator has reason to believe could be in the discharge.

7. *Sampling Waiver.* In lieu of discharge sampling data the permittee

must document description of why discharge samples could not be collected when the discharger is unable to collect samples due to climatic conditions which prohibit the collection of samples including weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). Once dangerous conditions have passed, the permittee shall collect a sample from the retention structure pond or lagoon. The sample shall be analyzed in accordance with Part IV.A.6. & 7. (above).

B. Written Notification

All discharge information and data will be made available to the Director upon request. Signed copies of monitoring reports shall be submitted to the Director if requested at the address specified in the request.

C. Penalties for Falsification of Reports

The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

D. Retention of Records

The permittee shall retain copies of all records required by this permit for a period of at least three years from the date reported. This period may be extended by request of the Director at any time.

E. Availability of Reports

In addition to data determined to be confidential under 40 CFR part 2, information submitted to EPA may be claimed as confidential by the submitter. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. As required by the Act, however, Notices of Intent, permits, the effluent data shall not be considered confidential and any claims of confidentiality for this information will be denied.

F. Planned Changes

The permittee shall document to the Pollution Prevention Plan as soon as possible, any planned physical alterations or additions to the permitted facility. The permittee must insure that any change or facility expansion will

not result in a discharge in violation of this permit.

G. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request 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.

H. Other Information

When the permittee becomes aware that he failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he shall promptly submit such facts or information.

I. Signatory Requirements

All reports or information submitted to the Director shall be signed and certified.

1. All reports or information shall be signed by the facility owner or operator/manager where the authority to sign documents has been assigned or delegated to the operator/manager.

a. For facilities owned by a corporation: by a responsible corporate officer. For the purpose of this permit, 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.

b. For a facilities owned by a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For facilities owned by a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

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 duly authorized representative only if the authorization is made in writing by a person describe above, and the authorization specifies either an individual or a position having responsibility for the overall operation.

3. 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 gathered and evaluated 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 fine and imprisonment for knowing violations.

Part V. Standard Requirements

A. 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 loss of authorization to discharge under this general permit; or for denial of a permit renewal application.

B. Inspection and Entry

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

1. Enter upon 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;

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

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

4. 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.

C. Toxic Pollutants

The permittee shall comply with effluent standards of 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.

D. Penalties for Violation of Permit Conditions

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 319, or 405 of the Act is subject to a civil penalty not to exceed \$25,000 per day for each violation. Any person who willfully or negligently violates permit conditions

implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation is subject to a fine of not less than \$2,500, nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or both.

E. Continuation of the Expired General Permit

An expired general permit continues in force and effect until a new general permit is issued.

F. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

G. 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.

H. 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.

I. Penalties for Falsification of Monitoring Systems and Reports

The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in Part V.D. (Penalties for Violation of Permit Conditions) of this permit.

J. Property Rights

The issuance of this permit does not convey and 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 or local laws or regulations.

K. 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, shall not be affected thereby.

L. State Laws

Nothing in this permit shall 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 law or regulation under authority preserved by section 510 of the Act.

M. Permit Actions

This permit may be modified, revoked or reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Part VI. Reopener Clause

If effluent limitations or requirements are established or modified in an approved State Water Quality Management Plan or Waste Load Allocation and if they are more stringent than those listed in this permit or control a pollutant not listed in this permit, this permit may be reopened to include those more stringent limits or requirements.

Part VII. Definitions

25-Year 24-Hour Rainfall 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.

Agronomic Rates means the land application of animal wastes at rates of application which provide the crop or forage growth with needed nutrients for optimum health and growth.

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where 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 the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal

feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.

Animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0. 1000 animal units will refer to group a. in definition number 8. 300 animal units (but less than 1000) will refer to group b. in definition number 8.

Best Available Technology ("BAT") means the best available technology which is economically achievable established under 301(b) and 402 of the Act. The criteria and standards for imposing technology-based treatment requirements are listed in 40 CFR 125.3.

Best Conventional Technology ("BCT") means the best conventional pollutant control technology which is economically achievable established under 301(b) and 402 of the Act. The criteria and standards for imposing technology-based treatment requirements are listed in 40 CFR 125.3.

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.

Concentrated Animal Feeding Operation means an "animal feeding operation" which meets the criteria in 40 CFR part 122, appendix B, or which the Director designates as a significant contributor of pollution pursuant to 40 CFR 122.23. Animal feeding operations defined as "concentrated" in 40 CFR part 122 appendix B are as follows:

a. New and existing operations which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

1. 1,000 slaughter or feeder cattle;
2. 700 mature dairy cattle (whether milkers or dry cows);
3. 2,500 swine weighing over 55 pounds;
4. 500 horses;
5. 10,000 sheep or lambs;
6. 55,000 turkeys;

7. 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;

8. 30,000 laying hens or broilers when facility has liquid manure handling system;

9. 5,000 ducks; or

10. 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep;

b. New and existing operations which discharge pollutants into navigable waters either through a man-made ditch, flushing system, or other similar man-made device, or directly into waters of the United States, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

1. 300 slaughter or feeder cattle;
2. 200 mature dairy cattle (whether milkers or dry cows);
3. 750 swine weighing over 55 pounds;
4. 150 horses;
5. 3,000 sheep or lambs;
6. 16,000 turkeys;
7. 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
8. 9,000 laying hens or broilers when the facility has a liquid manure handling system;
9. 1,500 ducks; or
10. 300 animal units (from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep).

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.

Control Facility means any system used for the retention of all wastes on the premises until their ultimate disposal. This includes the retention of manure, liquid waste, and runoff from the feedlot area.

Environmental Review means the process whereby an evaluation of the environmental information provided by the permit applicant is undertaken by EPA to identify and evaluate the related environmental impacts to determine if there will be a significant impact to the environment from the new facility (40 CFR 6.101(c)).

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, and is subject to 40 CFR part 412.

Groundwater means any subsurface waters.

Hydrologic Connection means the interflow and exchange between surface

impoundments and surface water through an underground corridor or groundwater. In the context of this permit, the reduction of hydrologic connection is to reduce the groundwater flow contact resulting in the transfer of pollutant materials from Concentrated Animal Feeding Operation containment structures into surface waters.

Land Application means the removal of wastewater and waste solids from a control facility and distribution to, or incorporation into, the soil mantle primarily for disposal purposes.

Liner means any barrier in the form of a layer, membrane or blanket, installed to prevent a significant hydrologic connection between liquids contained in retention structures and waters of the United States.

Process Wastewater means any process generated wastewater directly or indirectly used in the operation of a feedlot (such as spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact swimming, washing, or spray cooling of animals; and dust control) and any precipitation which comes into contact with any manure or litter, 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).

Retention Facility or Retention Structures means all collection ditches, conduits and swales for the collection of runoff and wastewater, and all basins, ponds and lagoons used to store wastes, wastewaters and manures.

Severe Property Damage means substantial physical damage to property, damage to the treatment facilities which

causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

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

Toxic Pollutants mean any pollutant listed as toxic under section 307(a)(1) of the Act.

Qualified Groundwater Scientist means a scientist or engineer who has received a baccalaureate or post-graduate degree in natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contamination fate and transport, and corrective action (40 CFR 258.50(f)).

Appendix A—State Specific Permit Language for the State of New Mexico

This NPDES permit is intended to protect surface waters resources that are "waters of the United States" from contamination resulting from concentrated animal feeding operations through either surface of subsurface conveyance. This permit is not intended to protect ground water resources from contamination. Compliance with this permit does not absolve the permittee from the need to comply with New Mexico Water Quality Control Commission Regulations for the protection of ground water. For information on these state regulations please contact the new Mexico Environment

Department, Groundwater Protection and Remediation Bureau, P.O. Box 26110, Santa Fe, New Mexico 87502 or call (505) 827-2900.

State Specific Permit Language for the State of Oklahoma

Part I.C. Limitations on Coverage. The following point source discharges are not authorized by this general permit:

7. "New" Concentrated Animal Feeding Operations commencing after the effective date of the Oklahoma Water Quality Standards (Oklahoma Annotated Code Title 785, (Chapter 45) effective date June 25, 1992) to the following waters:
 - a. Waterbodies designated as "Outstanding Resource Waters" and/or "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards;
 - b. Oklahoma waterbodies located within the watersheds of waterbodies designated as "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards; and
 - c. Waterbodies located within the boundaries of Oklahoma Water Quality Standards Appendix B areas which are specifically designated as "Outstanding Resource Waters" in Appendix A of the Oklahoma Water Quality Standards.

State Specific Permit Language for the State of Texas

Part IV.

- A. Discharge Notification. If, for any reason, there is a discharge, the permittee is required to notify the Director in writing within 14 days of the discharge from the retention facility. Written notification of discharges from retention structures to waters of the U.S. shall be reported to the State within five (5) working days. In addition the permittee shall document the following information to the pollution prevention plan within 14 days of becoming aware of such discharge:

BILLING CODE 5560-50-M

APPENDIX B

NOTICE OF INTENT (NOI) to be Covered by
the General Permit for Concentrated Animal Feeding Operations

This notification shall not be made to EPA, Region 6 if prohibited
from coverage under Part I.C. of this permit.

Name and Address of Facility (include County or Parish): _____

Telephone Number: _____

Name of Operator: _____

Name, Address and Telephone Number of Owner (if different): _____

Numbers and Type(s) of animals confined at the facility (e.g.
feeder pigs, dairy cows, etc.): _____

Total acreage occupied by the facility: _____

Latitude and Longitude Location of the Facility:

LATITUDE _____ degrees _____ minutes _____ seconds
LONGITUDE _____ degrees _____ minutes _____ seconds

Receiving stream (if known): _____

State Permit Number (if applicable): _____

Signature: _____

Signature must be in accordance with
Part IV.I of the General Permit

Date Signed

NOTICE OF TERMINATION (NOT)

NPDES Permit Number: _____

State Permit Number (if applicable): _____

Date NOI was submitted: _____

Name and Address of Facility (include County or Parish): _____

Telephone Number: _____

Name of Operator: _____

The following information is required only if changes have been made to the facility since the submittal of the Notice of Intent:

Name and Address of Owner (if different): _____

_____Numbers and Type(s) of animals confined at the facility (e.g. feeder pigs, dairy cows, etc.): _____

Total acreage occupied by the facility: _____

Latitude and Longitude Location of the Facility:

LATITUDE _____ degrees _____ minutes _____ seconds

LONGITUDE _____ degrees _____ minutes _____ seconds

Receiving Stream (if known): _____

Reason for the termination of permit coverage: _____

(Add attached sheets if necessary.)

Signature: _____

Signature must be in accordance with
Part IV.1 of the General Permit.

Date Signed _____

APPENDIX C

BASIC FORMAT FOR ENVIRONMENTAL ASSESSMENT

This is the basic format for the Environmental Assessment prepared by EPA Region 6 from the review of the applicant's Environmental Information Document (EID) required for new source NPDES permits. Comprehensive information should be provided for those items or issues that are affected; the greater the impact, the more detailed information needed. The EID should contain a brief statement addressing each item listed below, even if the item is not applicable. The statement should at least explain why the item is not applicable.

A. General Information

1. Name of applicant
2. Type of facility
3. Location of facility
4. Product manufactured

B. Description Summaries

1. Describe the proposed facility and construction activity
2. Describe all ancillary construction not directly involved with the production processes
3. Describe briefly the manufacturing processes and procedures
4. Describe the plant site, its history, and the general area

C. Environmental Concerns

1. Historical and Archeological (include a statement from the State Historical Preservation Officer)
2. Wetlands Protection and 100-year Floodplain Management (the Army Corps of Engineers must be contacted if any wetland area or floodplain is affected)
3. Agricultural Lands (a prime farmland statement from the Soil Conservation Service must be included)
4. Coastal Zone Management and Wild and Scenic Rivers
5. Endangered Species Protection and Fish and Wildlife Protection (a statement from the U.S. Fish and Wildlife Service must be included)
6. Air, Water and Land Issues: quality, effects, usage levels, municipal services used, discharges and emissions, runoff and wastewater control, geology and soils involved, land-use compatibility, solid and hazardous waste disposal, natural and man-made hazards involved.
7. Biota concerns: floral, faunal, aquatic resources, inventories and effects
8. Community Infrastructures available and resulting effects: social, economic, health, safety, educational, recreational, housing, transportation and road resources

1 General Information

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APPENDIX D

CONTACTS AND REFERENCE MATERIALS

To report kills or determine impacts on endangered or threatened species, contact the Fish and Wildlife Service Office nearest you that is listed below:

Fish & Wildlife Service

Regional Office
500 Gold Avenue, SW
P.O. Box 1305
Albuquerque, NM 87103
(505) 766-2914

Field Office
3530 Pan American Highway NE
Suite D
Albuquerque, NM 87107
(505) 883-7877

Field Office
711 Stadium Drive East
Suite 252
Arlington, TX 76011
(817) 885-7830

Field Office
611 East 6th Street
4th Floor
Austin, TX 78701
(512) 482-5436

Field Office
17629 El Camino Real
Suite 211
Houston, TX 77058
(713) 286-8282

Field Office
c/o Corpus Christi State University
Campus Box 338
6300 Ocean Drive
Corpus Christi, TX 78412
(512) 888-3346

Field Office
222 South Houston, Suite A
Tulsa, OK 74127
(918) 581-7458

Field Office
825 Caliste Saloom
Brandywine II, Suite 102
Lafayette, LA 70508
(318) 264-6630

For General Information and Reference Materials, please contact the appropriate State Agency listed below:

Louisiana

Louisiana Cooperative Extension
Service
Louisiana State University
Knapp Hall
Baton Rouge, LA 70803-1900
(504) 388-6998

Louisiana Department of
Environmental Quality
Office of Water Resources
P.O. Box 82215
Baton Rouge, LA 70884-2215
(504) 765-0585

Louisiana Department of Agriculture
and Forestry
P.O. Box 94302
Baton Rouge, LA 70804-9302
(504) 922-1234

Soil Conservation Service
U. S. Department of Agriculture
3737 Government Street
Alexandria, LA 71302
(504) 473-7751

New Mexico

New Mexico Cooperative Extension
Service
New Mexico State University
P.O. Box 3AE
Las Cruces, NM 88003
(505) 646-6404

New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502
(505) 827-2850

New Mexico Department of Agriculture
Box 30005, Department 3189
Las Cruces, NM 88003-0005
(505) 646-3007

Soil Conservation Service
U. S. Department of Agriculture
517 Gold Avenue SW, Room 3301
Albuquerque, NM 87102-3157
(505) 766-2173

Oklahoma

Oklahoma Cooperative Extension Service
Oklahoma State University
214 Agricultural Hall
Stillwater, OK 74078-0469
(405) 744-5425

Oklahoma Department of Agriculture
2800 N. Lincoln Blvd.
Oklahoma City, OK 73105-4298
(405) 521-3864

Oklahoma Conservation Commission
2800 N. Lincoln Blvd., Room 160
Oklahoma City, OK 73105
(405) 521-2384

Soil Conservation Service
U.S. Department of Agriculture
USDA Agricultural Center Bldg.
Stillwater, OK 74074
(405) 624-4488

Texas

Texas Agricultural Extension Service
Texas A & M University
303 Agricultural Engineering Bldg.
College Station, TX 77843-2121
(409) 845-7451

Texas Water Commission
Agricultural Section
P.O. Box 13087
Austin, TX 78711-3087
(512) 475-4573

Texas Department of Agriculture
P.O. Box 12847
Austin, TX 78711
(512) 463-7476

Texas State Soil and Water
Conservation Board
311 North 5th
Temple, TX 76503
(817) 773-2250

Soil Conservation Service
U. S. Department of Agriculture
W.R. Poage Bldg.
101 S. Main Street
Temple, TX 76501-7682
(817) 774-1261

REFERENCE MATERIALS

Following is a list of available sources for reference material on proper operations and maintenance of concentrated animal feeding operations. Also included are sources for reference of preferred management practices as recognized by the agricultural industry.

GENERAL REFERENCES

National Engineering Handbook Part 651, Agricultural Waste Management Field Handbook (1992) P.O. Box 2890, Washington, D.C. 20013.

Livestock Waste Facilities Handbook, MPWS-18, Extension Agricultural Engineer (1985) University of Missouri, Columbia, MO 65211.

STANDARDS 1992, Standards, Engineering Practices and Data, 39th Edition (1992) American Society of Agricultural Engineers, 2950 Niles Road, St. Joseph, MI 49085-9659.

"25 Year, 24 Hour Rainfall (Inches)," Technical Paper 40, United States Department of Commerce, Weather Bureau, Washington, D.C.

LAND APPLICATION

"Animal Waste Utilization on Cropland and Pastureland," L.R. Shuyler (1979), USDA Utilization Research Report No. 6, Washington, D.C.

"Animal Waste Utilization on Cropland and Pastureland," U. S. Environmental Protection Agency (1979), EPA-600/2-79-059. U.S. Government Printing Office, Washington, D.C.

"Swine Lagoon Effluent Applied to Coastal Bermudagrass: I. Forage Yield, Quality, and Element Removal," J.C. Burns, P.W. Westerman, L.D. King, G.A. Cummings, M.R. Overcash, L. Goode (1985). *Journal of Environmental Quality*, 14:9-14.

"Effectiveness of Forest and Grass Buffer Strips in Improving the Water Quality of Manure Polluted Runoff," R.C. Doyle, G.S. Stanton (1977). ASAE Paper 77-2501, St. Joseph, MI 49085.

"Corn Growth and Composition in Relation to Soil Fertility: II. Uptake of N, P and K and their Distribution in Different Plant Parts During the Growing Season," J.J. Hanaway (1962). *Agron. Journal* 54:217-222.

"Changes in the Physical Properties of Soil by Fertilizer and Manure Application," T.D. Biswas, B.M. Ingole and K.K. Jha (1969). *Fertilizer News*, Vol. 14, No. 7, pp. 23-26.

"Animal Waste Utilization on Cropland and Pastureland. A Manual for Evaluation Agronomic and environmental Effects," United States Department of Agriculture (1979). Sci. and Educ. Adm. Util. Res. Rep. 6.

"Site Selection as Related to Utilization and Disposal of Organic Wastes," J.E. Witty, K.W. Flach (1977). *American Society of Agron., Soils for Management of Organic Wastes and Wastewaters*, Chapter 13.

WASTE CHARACTERISTICS

"Soil Nutrient Content of Manures in an Arid Climate," R.M. Arrington, C.E. Pachek (1980). *Proceedings of Fourth International Symposium on Agricultural Waste*, Amarillo, Texas.

"Livestock Waste Characterization-a New Approach," C.L. Barth (1985). *Agricultural Waste Utilization and Management, Proceedings of the Fifth International Symposium of Agricultural Wastes*, ASAE, St. Joseph, MI, p. 286.

"Available Nutrients in Livestock Waste," P.W. Westerman, L.M. Safley, Jr., J.C. Barker, G.M. Chescheir, III (1985). *Agricultural Waste Utilization and Management, Proceedings of the Fifth International Symposium of Agricultural Wastes*, ASAE, St. Joseph, MI, p. 285.

WASTE MANAGEMENT PRACTICES

"Vegetative Filter Treatment of Dairy Milkhouse Wastewater," C.B. Schwer, J.C. Clausen (1989). *Environmental Quality*, 18:446-451.

"Cattle Feedlot Waste Management Practices for Water and Air Pollution Control," Dr. J.M. Sweeten (1990). *Texas Agricultural Extension Service*, B-1671.

"Dairy Manure Handling Systems and Equipment," Dr. J.M. Sweeten (1983). *Texas Agricultural Extension Service*, B-1446.

"Pollution Control for Dairy Farms," Dr. J.M. Sweeten (1982). *Texas Agricultural Extension Service*, B-1286.

"Waste Management System," SCS Conservation Practice Standard, Code 312 (1979). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Waste Storage Pond," SCS Conservation Practice Standard, Code 425 (1979). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Fencing," SCS Conservation Practice Standard, Code 382 (1980). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Waste Storage Structure," SCS Conservation Practice Standard, Code 313 (1980). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Filter Strip," SCS Conservation Practice Standard, Code 393 (1982). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Pond Sealing or Lining," SCS Conservation Practice Standard, Code 521 (1984). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Waste Treatment Lagoon," SCS Conservation Practice Standard, Code 359 (1984). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Diversion," SCS Conservation Practice Standard, Code 362 (1985). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Guide on Design, Operation and Management of Anaerobic Lagoons," Technical Note Ser. 711, SNTC (1985). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Interim Engineering Standard for Swine and Poultry Disposal Pit," SNTC (1987). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Interim Standard for Dead Poultry Composting," (1989). United States Department of Agriculture. Soil Conservation Service, Auburn, Alabama.

"Design and Construction Guidelines for Considering Seepage from Agricultural Waste Storage Ponds and Treatment lagoons," Technical Note Ser. 716 (1990). United States Department of Agriculture. Soil Conservation Service, Fort Worth, Texas.

REFERENCES FOR OKLAHOMA

Oklahoma Soil Fertility Handbook, 1st Edition (1977). Oklahoma State University Cooperative Extension Service in cooperation with the Oklahoma Plant Food Education Society.

"Oklahoma Facts: Land Application of Livestock Manure," Fact Sheet 1710. Oklahoma State University Cooperative Extension Service.

"Oklahoma Facts: OSU Soil Test Calibrations," Fact Sheet 2225. Oklahoma State University Cooperative Extension Service.

Livestock Waste Facilities Handbook, MWPS-18. Midwest Plan Service, Iowa State University, Ames, Iowa 50011.

REFERENCES FOR TEXAS

"25 Year, 24 Hour Rainfall (Inches)," Technical Paper 40, United States Department of Commerce, Weather Bureau, Washington, D.C.

"Minimum Storage Period in Days," Texas Water Development Board, Report No. 64, Austin, Texas.

"Prediction of Runoff from Feedlots Using Soil Cover Complex Processes," National Engineering Handbook, Section 4, United States Department of Agriculture, Washington, D.C.