

**Title of Regulation: 9 VAC 25-191. Virginia [~~Pollution~~ Pollutant] Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations (adding 9 VAC 25-191-10 through 9 VAC 25-191-50).**

CHAPTER 191.

VIRGINIA [~~POLLUTION-POLLUTANT~~] DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT FOR  
CONCENTRATED ANIMAL FEEDING OPERATIONS.

**9 VAC 25-191-10. Definitions.**

*The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and 9 VAC 25-31 (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:*

*["Agricultural storm water" means storm water that is not the sole result of land application of manure, litter or process wastewater. Where manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of an animal feeding operation is an agricultural storm water discharge.]*

*"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:*

- 1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and*
- 2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.*

*Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.*

*"Best Management Practices" or "BMPs" means structural improvements, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters. BMPs also*

STATE WATER CONTROL BOARD PAGE 2 OF 34  
9 VAC 25-191 VIRGINIA ~~[POLLUTION-POLLUTANT]~~ DISCHARGE ELIMINATION  
SYSTEM (VPDES) GENERAL PERMIT FOR CONCENTRATED ANIMAL  
FEEDING OPERATIONS

*include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, or drainage from raw material storage.*

*"Concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a "Large CAFO" or as a "Medium CAFO," or that is designated as a "Medium CAFO" or a "Small CAFO." Any AFO may be designated as a CAFO by the director in accordance with the provisions of 40 CFR 122.23 (April 14, 2003).*

*1. "Large CAFO." An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:*

- a. 700 mature dairy cattle, whether milked or dry;*
- b. 1,000 veal calves;*
- c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow-calf pairs;*
- d. 2,500 swine each weighing 55 pounds or more;*
- e. 10,000 swine each weighing less than 55 pounds;*
- f. 500 horses;*
- g. 10,000 sheep or lambs;*
- h. 55,000 turkeys;*
- i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;*
- j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;*
- k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;*
- l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or*
- m. 5,000 ducks, if the AFO uses a liquid manure handling system.*

2. "Medium CAFO." The term "Medium CAFO" includes any AFO that has the type and number of animals found within any of the ranges below and that has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

a. The type and number of animals it stables or confines falls within any of the following ranges:

- (1) 200 to 699 mature dairy cattle (whether milked or dry cows);
- (2) 300 to 999 veal calves;
- (3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow-calf pairs;
- (4) 750 to 2,499 swine (each weighing 55 pounds or more);
- (5) 3,000 to 9,999 swine (each weighing less than 55 pounds);
- (6) 150 to 499 horses;
- (7) 3,000 to 9,999 sheep or lambs;
- (8) 16,500 to 54,999 turkeys;
- (9) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (10) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (11) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
- (12) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system; or
- (13) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. Either one of the following conditions are met:

- (1) Pollutants are discharged into ~~[waters of the United States]~~ surface waters of the state through a man-made ditch, flushing system, or other similar man-made device; or

(2) Pollutants are discharged directly into ~~[waters of the United States~~ surface waters of the state] that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

The term "man-made" means constructed by man and used for the purpose of transporting wastes.

3. "Small CAFO." An AFO that is designated as a CAFO and is not a Medium CAFO.

"Director" means the Director of the [Virginia] Department of Environmental Quality, or his designee.

"Operator" means any owner or operator (individual, partnership, corporation, or association) of an AFO or CAFO in this state that is eligible to be certified under the provisions of this general permit.

"Permittee" means any operator (individual, partnership, corporation, or association) in the Commonwealth of Virginia that is certified to be covered under the provisions of this general permit.

"Process wastewater" means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

*"Setback" means a specified distance from surface waters or potential conduits to surface waters where manure, litter, and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to open tile line intake structures, sinkholes, and agricultural well heads.*

*"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.*

*"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.*

**9 VAC 25-191-20. Purpose; delegation of authority; effective date of the permit.**

*A. This general permit regulation governs the pollutant management activities of animal wastes and process wastewater at concentrated animal feeding operations. These concentrated animal feeding operations may operate and maintain treatment works for waste storage, treatment or recycling and may perform land application of manure, litter, process wastewater, compost, biosolids, or sludges.*

*B. The director, or an authorized representative, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.*

*C. This general permit will become effective on ~~[November 16, 2004]~~ January 1, 2006, and will expire five years from the effective date.*

**9 VAC 25-191-30. Authorization to discharge.**

*A. Any owner or operator governed by this general permit is hereby authorized to discharge animal wastes and process wastewater at concentrated animal feeding operations to surface waters of the Commonwealth of Virginia provided that the owner submits a complete registration statement of 9 VAC 25-191-40 and receives notification of coverage by the board, and has complied with the following conditions:*

*1. The owner has not been required to obtain an individual permit according to 9 VAC 25-31;*

*~~[2. The owner has filed any required permit fee;]~~*

*[32]. The owner has complied or will comply with the effluent limitations and other requirements of 9 VAC 25-191-50;*

*[43]. The activities of the concentrated animal feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater [to surface waters of the state] except in the case of a storm event greater than the 25-year, 24-hour storm, except that for swine, poultry, and veal calf operations constructed after April 14, 2003, in the case of a storm event greater than the 100-year, 24-hour storm. [Agricultural storm water discharges are permitted.] Domestic sewage or industrial waste shall not be managed under this general permit;*

*[54]. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit by a permittee for routine disposal of daily poultry mortalities shall be considered a violation of this permit. This prohibition shall not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.1-726 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia; and*

*[65]. Adjoining property notification.*

*a. The owner shall give notice of the registration statement to all owners or residents of property that adjoins the property on which the animal feeding operation will be located. Such notice shall include (i) the types and maximum number of animals that will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted. This notice requirement is waived whenever registration is for the purpose of renewing coverage under a permit and no expansion is proposed and the department has not issued any special or consent order relating to violations under the existing permit. This notice is also waived for poultry operations except those that propose construction of new poultry growing houses after December 1, 2000.*

*b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the*

*general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and received by the owner not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement.*

*B. The owner shall not be authorized by this general permit to discharge to state waters specifically named in other board regulations or policies that prohibit such discharges.*

*C. Receipt of this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.*

**9 VAC 25-191-40. Registration statement.**

*A. In order to be covered under the general permit, the owner shall file a complete VPDES Concentrated Animal Feeding Operation General Permit registration statement~~]~~ or a VPA Animal Feeding Operation General Permit registration statement]. The registration statement [submitted] shall include the following information:*

- 1. The name, location, and mailing address of the facility;*
- 2. The latitude and longitude of the production area (entrance to production area);*
- 3. The name, mailing address, and telephone number of the owner and operator;*
- 4. The name and telephone number of a contact person other than the operator, if applicable;*
- 5. The best time of day and day of the week to contact the operator or contact person;*
- 6. If the facility has an existing VPA or VPDES permit, the permit number;*
- 7. The method of mortality management;*
- 8. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area;*
- 9. Specific information about the maximum number [average weight] of and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine*

STATE WATER CONTROL BOARD PAGE 8 OF 34  
9 VAC 25-191 VIRGINIA ~~[POLLUTION POLLUTANT]~~ DISCHARGE ELIMINATION  
SYSTEM (VPDES) GENERAL PERMIT FOR CONCENTRATED ANIMAL  
FEEDING OPERATIONS

*weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);*

*10. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);*

*11. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;*

*12. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and*

*13. Estimated amounts of poultry waste transferred to other persons per year (tons).*

*B. The applicant shall attach to the registration statement a copy of the [facility's approved nutrient management plan and a] letter from the Department of Conservation and Recreation certifying approval of the facility's nutrient management plan and [a copy of the approved nutrient management plan certifying if the nutrient management plan was written after December 31, 2005, that the facility's nutrient management plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.]*

*C. The registration statement shall include the following certification: "I certify that notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the [confined concentrated] animal feeding operation will be located. This notice included the types and numbers of animals that will be maintained at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. (The preceding certification is waived if the registration is for renewing coverage under a permit and no expansion of the operation is proposed and the department has not issued any special or consent order relating to violations under the existing permit. This notice is also waived for poultry operations except those that propose construction of new poultry growing houses after December 1, 2000.) I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons*



*directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."*

*D. Where to submit. The registration statement shall be submitted to the DEQ Regional Office that serves the area where the concentrated animal feeding operation is located.*

**9 VAC 25-191-50. Contents of the general permit.**

*Any CAFO whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPDES Permit Regulation, 9 VAC 25-31.*

General Permit No.: VAG01

Effective Date: [January 1, 2006]

Expiration Date: [December 31, 2010]

GENERAL PERMIT FOR CONCENTRATED ANIMAL FEEDING OPERATIONS

AUTHORIZATION TO DISCHARGE UNDER THE

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM

AND

THE VIRGINIA STATE WATER CONTROL LAW

*In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of concentrated animal feeding operations are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations or policies that prohibit such discharges.*

*The authorized discharge shall be in accordance with this cover page, Part I - Pollutant Management and Monitoring Requirements, Part II - Best Management Practices, Nutrient Management, and Special Conditions, and Part III - Conditions Applicable to All VPDES Permits, as set forth herein.*

PART I

POLLUTANT MANAGEMENT AND MONITORING REQUIREMENTS

A. *Pollutant management authorization. During the period beginning with the date of coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the ~~[permitted site~~ location or locations identified in the registration statement and the facility's approved nutrient management plan].*

B. *Monitoring requirements.*

1. ~~*[Ground water monitoring wells shall be installed at earthen liquid waste storage facilities constructed after November 17, 2004, to an elevation below the seasonal high water table or within one foot thereof. A minimum of one up gradient and one down gradient well shall be installed at each new earthen waste storage facility. At earthen liquid waste storage facilities constructed after December 1, 1998 to an elevation below the seasonal high water table or within one foot thereof, ground water monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires ground water monitoring.]*~~ Existing wells may be utilized to meet this requirement if properly located and constructed.

2. *All facilities previously covered under a VPA permit that required ground water monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located relative to the seasonal high water table.*

3. *At facilities where ground water monitoring is required, the following conditions apply:*

- a. *One data set shall be collected from each well prior to any waste being placed in the storage facility.*
- b. *The static water level shall be measured prior to bailing well water for sampling.*
- c. *At least three well volumes of ground water shall be withdrawn immediately prior to sampling each monitoring well.*

4. *In accordance with subdivisions 2 and 3 of this subsection, the ground water shall be monitored by the permittee at the monitoring wells as specified below. Additional ground water monitoring may be required in the facility's approved nutrient management plan.*

GROUND WATER MONITORING

PARAMETER	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	ft	1/3 years	Measured
Ammonia Nitrogen	NL	<del>mg/l</del> mg/L	1/3 years	Grab
Nitrate Nitrogen	NL	<del>mg/l</del> mg/L	1/3 years	Grab
PH	NL	SU	1/3 years	Grab
Conductivity	NL	umhos/cm	1/3 years	Grab

NL = No limit, this is a monitoring requirement only.

5. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

PARAMETER	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample

STATE WATER CONTROL BOARD PAGE 12 OF 34  
 9 VAC 25-191 VIRGINIA ~~[POLLUTION-POLLUTANT]~~ DISCHARGE ELIMINATION  
 SYSTEM (VPDES) GENERAL PERMIT FOR CONCENTRATED ANIMAL  
 FEEDING OPERATIONS

			<i>cy</i>	<i>Type</i>
<i>PH</i>	<i>NL</i>	<i>SU</i>	<i>1/3</i>	<i>Composit</i>
			<i>years</i>	<i>e</i>
<i>Phosphoru</i>	<i>NL</i>	<i>ppm</i>	<i>1/3</i>	<i>Composit</i>
<i>s</i>		<i>or</i>	<i>years</i>	<i>e</i>
		<i>lbs/ac</i>		
<i>Potash</i>	<i>NL</i>	<i>ppm</i>	<i>1/3</i>	<i>Composit</i>
		<i>or</i>	<i>years</i>	<i>e</i>
		<i>lbs/ac</i>		
<i>Calcium</i>	<i>NL</i>	<i>ppm</i>	<i>1/3</i>	<i>Composit</i>
		<i>or</i>	<i>years</i>	<i>e</i>
		<i>lbs/ac</i>		
<i>Magnesium</i>	<i>NL</i>	<i>ppm</i>	<i>1/3</i>	<i>Composit</i>
		<i>or</i>	<i>years</i>	<i>e</i>
		<i>lbs/ac</i>		

*NL = No limit, this is a monitoring requirement only.*

*SU = Standard Units*

*6. Soil monitoring shall be conducted at a depth of between 0-6 inches, unless otherwise specified in the facility's approved nutrient management plan.*

*7. Waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.*

WASTE MONITORING

PARAMETERS	LIMIT	UNIT	MONITORING	
	A-	S	REQUIREMENTS	
			TION	
	S			
			Frequenc	Sample
			y	Type
Total Kjeldahl Nitrogen	NL	*	1/year	Composit e
Ammonia Nitrogen	NL	*	1/year	Composit e
Total Phosphorus	NL	*	1/year	Composit e
Total Potassium	NL	*	1/year	Composit e
Calcium**	NL	*	1/year	Composit e
Magnesium**	NL	*	1/year	Composit e
Moisture Content	NL	%	1/year	Composit e

NL = No limit, this is a monitoring requirement only.

\* Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

\*\* Calcium and magnesium monitoring not required for poultry waste.

8. *Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.*

9. *All monitoring data collected as required by this section and any additional monitoring data shall be maintained on site for a period of five years and shall be made available to department personnel upon request.*

*PART II*

*WASTE STORAGE FACILITY DESIGN, OPERATION, AND MAINTENANCE; RECORDKEEPING AND  
REPORTING; NUTRIENT MANAGEMENT; SPECIAL CONDITIONS*

*A. Waste storage facility design, operation and maintenance.*

1. *Any manure, litter, or process wastewater storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm; or for swine, poultry, and veal calf operations constructed after April 14, 2003, in the case of a storm event greater than the 100-year, 24-hour storm, and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.*

2. *Waste storage facilities constructed after April 14, 2003, shall not be located on a 100-year floodplain, except that dry poultry waste storage facilities may be constructed on the 100-year floodplain, when the following conditions are met:*

*a. When the poultry operation has no land outside the floodplain on which to construct the facility; and*

*b. The facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures.*

*New, expanded or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood*

*elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures.*

3. ~~[New earthen~~ Earthen] liquid waste storage facilities [constructed after December 1, 1998] shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one-foot thickness with a maximum permeability rating of 0.0014 inches per hour. A licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority, or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.

4. At earthen liquid waste storage facilities constructed below the seasonal high water table, the top surface of the waste shall be maintained at a level of at least two feet above the water table.

5. All liquid waste storage facilities shall maintain ~~[one foot of freeboard at all times, up to and including at least one foot of freeboard at all times, except in the case of a storm event greater than a 25-year, 24-hour storm.~~ one foot of freeboard at all times, except in the case of a storm event greater than a 25-year, 24-hour storm. Liquid waste storage facilities at swine, poultry, and veal calf operations constructed after April 14, 2003, shall maintain ~~[one foot of freeboard at all times, up to and including at least one foot of freeboard at all times, except in the case of a storm event greater than a 100-year, 24-hour storm.~~ one foot of freeboard at all times, except in the case of a storm event greater than a 100-year, 24-hour storm.

6. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. The manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate. The operator shall periodically inspect for leaks on equipment used for land application of manure, litter, or process wastewater.

7. All open surface liquid impoundments shall have a depth marker that clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event; or in the case of swine, poultry, and veal calf operations constructed after April 14, 2003, the runoff and direct precipitation from a 100-year, 24-hour rainfall event.

8. *When any waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all waste from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual waste shall be removed from the surface below the stockpile when the waste is taken out of storage. Removed waste materials shall be utilized according to the nutrient management plan.*

9. *Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Dry poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility that provides adequate storage.*

*Adequate storage shall, at a minimum, include the following:*

*a. Poultry waste shall be covered to protect it from precipitation and wind;*

*b. Storm water shall not run onto or under the stored poultry waste; and*

*c. A minimum of two feet separation distance shall be maintained to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All dry poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. Seasonal high water table means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ( $1 \times 10^{-6}$  centimeters per second).*

10. *Mortalities shall not be disposed of in any liquid manure or process wastewater system, and the permittee shall record methods of mortality management and practices used by the CAFO to prevent the discharge of pollutants to surface water. Confined poultry feeding operations that use disposal pits for routine disposal of daily*



*mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be considered a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.1-726 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.*

*B. Recordkeeping and reporting.*

*1. The permittee shall maintain records documenting the following visual inspections:*

- a. Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channelling contaminated storm water to any wastewater or manure storage structure;*
- b. Daily inspection of water lines, including drinking water or cooling water lines; and*
- c. Weekly inspections of the manure, litter, and process wastewater storage structures; the inspection shall record the level in liquid impoundments as indicated by a depth marker.*

*The permittee shall also document any actions taken to correct deficiencies found during the visual inspections; deficiencies not corrected within 30 days shall be accompanied by an explanation of the factors preventing immediate correction;*

*2. The permittee shall maintain records documenting the current design of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity;*

*3. The permittee shall maintain records of the date, time, and estimated volume of any overflow from a waste or process wastewater storage structure;*

*4. Records shall be maintained to demonstrate:*

- a. What fields under the ownership or operational control of the CAFO received waste;*
- b. At what rate waste has been applied;*
- c. That the application schedule has been followed;*
- d. The method used to apply the waste;*

- e. What crops have been planted;*
- f. The weather conditions at the time of application and for 24 hours prior to and following application;*
- g. What nutrients from sources other than manure, litter or process wastewater have been applied to each field;  
and*
- h. The date or dates of manure application equipment inspection.*

*These records shall be maintained on site for a period of five years after recorded application is made and shall be made available to department personnel upon request.*

*5. The permittee shall submit an annual report to the director by February 15 of each year for the previous calendar year or part thereof since covered by this general permit. The annual report shall include:*

- a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);*
- b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);*
- c. Estimated amount of poultry waste transferred to other persons by the CAFO in the previous 12 months (tons);*
- d. Total number of acres for land application covered by the facility's approved nutrient management plan;*
- e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;*
- f. Summary of all manure, litter and process wastewater discharges from the production area that entered or could be expected to enter state waters in the previous 12 months, including date, time, and approximate volume; and*
- g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.*

6. The permittee shall create, maintain for five years, and make available to the director, upon request, any records that will document the implementation and management of the minimum elements described below:

- a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- c. Ensure that clean water is diverted, as appropriate, from the production area;
- d. Prevent direct contact of confined animals with ~~[waters of the United States~~ surface waters of the state];
- e. Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
- f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to ~~[waters of the United States~~ surface waters of the state];
- g. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
- h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater.

C. Nutrient management.

1. All CAFO owners or operators shall ~~[develop and]~~ implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation ~~[that].~~ All NMP's written after December 31, 2005 shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The NMP shall be maintained on site. All NMPs developed for poultry operations shall be developed with respect to existing state law and regulation. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen

~~[and phosphorus]~~ loss to ground and surface waters. [NMP's written after December 31, 2005, and NMP's implemented after December 31, 2006, shall also include provisions to minimize phosphorus loss to ground and surface waters according to the most current standards and criteria developed by DCR at the time the plan is written.] The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

- a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied, unless exempted in Part II D;
  - b. Site evaluation and assessment of soil types and potential productivities;
  - c. Nutrient management sampling including soil and waste monitoring;
  - d. Storage and land area requirements;
  - e. Calculation of waste application rates;
  - f. Waste application schedules; and
  - g. A plan for waste utilization in the event the operation is discontinued.
2. Buffer zones shall be maintained as follows:
- a. Distance from occupied dwellings not on the owner's property - 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);
  - b. Distance from water supply wells or springs -100 feet;
  - c. Distance from surface water courses:
    - (1) 100 feet (without a vegetated buffer);[or]
    - (2) 35-foot wide vegetated buffer; or
    - (3) Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer, or 35-foot wide vegetated buffer.
  - d. Distance from rock outcroppings (except limestone) - 25 feet;

*e. Distance from limestone outcroppings - 50 feet;*

*f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.*

*D. Special conditions.*

*1. Poultry waste may be transferred from a permitted poultry grower to another person or broker without the requirement for the identification of fields where such waste will be applied in the facility's approved nutrient management plan if the following conditions are met:*

~~*[a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person a copy of the most recent nutrient analysis for the poultry waste and a fact sheet approved by the department, in consultation with the Department of Conservation and Recreation, that includes appropriate practices for proper storage and management of the waste. The person receiving the waste shall provide the poultry grower his name and address and acknowledge in writing receipt of the waste, the nutrient analysis and the fact sheet. If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.*~~

~~*b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the amount of poultry waste received by the person, the date of the transaction, the nutrient content of the waste, the locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code), the name of the stream or waterbody known to the recipient that is nearest to the waste utilization site, and the signed waste transfer acknowledgement. These records shall be maintained on site for five years after the transaction and shall be made available to department personnel upon request.*~~

*a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person a copy of the most recent nutrient analysis for the poultry waste and a fact sheet approved by the department, in consultation with the Department of Conservation and Recreation, that includes appropriate practices for proper storage and management of the waste. The person or broker receiving the waste shall provide the poultry grower:*

- i. his name and address,
- ii. written acknowledgement of receipt of the waste,
- iii. the nutrient analysis of the waste, and
- iv. the fact sheet.

If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.

b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

- i. the amount of poultry waste received by the person,
- ii. the date of the transaction,
- iii. the nutrient analysis of the waste,
- iv. the locality in which the recipient intends to utilize the waste (i.e. nearest town or city and zip code),
- v. the name of the stream or waterbody known to the recipient that is nearest to the waste utilization site,
- vi. the signed waste transfer acknowledgement.

These records shall be maintained on site for 5 years after the transaction and shall be made available to department personnel upon request.

c. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.]

2. The permittee shall notify the department's regional office at least 14 days prior to:

- a. Animals being initially placed in the facility; or
- b. Utilization of any new waste storage facilities.

3. Each operator of a facility covered by this general permit shall have completed the training program offered or approved by the Department of Conservation and Recreation in the two years prior to submitting the registration statement for general permit coverage, or shall complete such training within one year after submitting the registration statement for general permit coverage. All operators shall complete the training program at least once every three years.

### PART III

#### CONDITIONS APPLICABLE TO ALL VPDES PERMITS

##### A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 (2001) or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that ensure accuracy of measurements.

##### B. Records.

1. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The individual or individuals who performed the sampling or measurements;
  - c. The dates ~~[and times]~~ analyses were performed;
  - d. The individual or individuals who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain

*records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.*

*C. Reporting monitoring results.*

- 1. The permittee shall submit the results of the monitoring required by this permit not later than the tenth day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.*
- 2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.*
- 3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 (2001) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.*
- 4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.*

*D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request, copies of records required to be kept by this permit.*



*E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.*

*F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:*

- 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;*  
*or*
- 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.*

*G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:*

- 1. A description of the nature and location of the discharge;*
- 2. The cause of the discharge;*
- 3. The date on which the discharge occurred;*
- 4. The length of time that the discharge continued;*
- 5. The volume of the discharge;*
- 6. If the discharge is continuing, how long is it expected to continue;*
- 7. If the discharge is continuing, what the expected total volume of the discharge will be; and*

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:

- a. Any unanticipated bypass; and
- b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;

*b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and*

*c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.*

*The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.*

*3. The permittee shall report all instances of noncompliance not reported under Parts III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.*

*NOTE: The immediate (within 24 hours) reports required in Parts III G, H and I may be made to the department's regional office. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.*

*J. Notice of planned changes.*

*1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:*

*a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:*

*(1) After promulgation of standards of performance under § 306 of the Clean Water Act that are applicable to such source; or*

*(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;*

*b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or*

*c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.*

*2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.*

**K. Signatory requirements.**

*1. Registration statement. All registration statements shall be signed as follows:*

*a. For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;*

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

*c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a public agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.*

*2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part III K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:*

a. *The authorization is made in writing by a person described in Part III K 1;*

b. *The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and*

c. *The written authorization is submitted to the department.*

3. *Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.*

4. *Certification. Any person signing a document under Parts III K 1 or 2 shall make the following certification:*

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

L. *Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.*

*The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or*

*standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.*

*M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.*

*N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.*

*O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by, § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U), and "upset" (Part III V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.*

*P. Oil and hazardous substance liability. 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 to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.*

*Q. 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) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.*

*R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.*

*S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.*

*T. 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.*

*U. Bypass.*

*1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts III U 2 and U 3.*

*2. Notice.*

*a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least ten days before the date of the bypass.*

*b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.*

*3. Prohibition of bypass.*

*a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:*

*(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;*

*(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable*

*engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and*

*(3) The permittee submitted notices as required under Part III U 2.*

*b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Part III U 3 a.*

*V. Upset.*

*1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.*

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

*a. An upset occurred and that the permittee can identify the causes of the upset;*

*b. The permitted facility was at the time being properly operated;*

*c. The permittee submitted notice of the upset as required in Part III I; and*

*d. The permittee complied with any remedial measures required under Part III S.*

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

*W. Inspection and entry. The permittee shall allow the director or an authorized representative, upon 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 purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.*

*For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.*

*X. Permit actions. Permits may be modified, revoked and 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.*

*Y. Transfer of permits.*

*1. Permits are not transferable to any person except after notice to the department. Except as provided in Part III Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.*

*2. As an alternative to transfers under Part III Y 1, this permit may be automatically transferred to a new permittee if:*

*a. The current permittee notifies the department at least two days in advance of the proposed transfer of the title to the facility or property;*

*b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and*

*c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.*

*Z. 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.*

FORMS

NOTICE: The form used in administering 9 VAC 25-191, Virginia [~~Pollution~~ Pollutant] Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations, is listed and published below.

*Virginia [~~Pollution~~ Pollutant] Discharge [Elimination] System General Permit Registration Statement for Concentrated Animal Feeding Operations.*

CERTIFIED TRUE AND ACCURATE: \_\_\_\_\_

*Robert G. Burnley, Director, DEQ*

DATE: \_\_\_\_\_