

6. What Are the Minimum Required Elements of an NOI or Application for an Individual Permit?

Today's final rule revises the information requirements for seeking coverage under an NPDES permit for CAFOs. Today's rule revises the NPDES individual permit application for CAFOs (Form 2B for CAFOs and Aquatic Animal Production Facilities), and specifies the information required in an NOI form for coverage under a CAFO general. EPA is requiring applicants for coverage under either individual or general CAFO permits to provide the same information:

(i) The name of the owner or operator;
 (ii) The facility location and mailing addresses;
 (iii) Latitude and longitude of the production area (entrance to production area);

(iv) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of paragraph (f)(7) of § 122.21;

(v) Specific information about the number and type of animals, whether in open confinement and 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);

(vi) 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);

(vii) The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

(viii) Estimated amount of manure, litter, and process wastewater generated per year (tons/gallons);

(ix) Estimated amount of manure, litter, and of process wastewater transferred to other persons per year (tons/gallons); and

(x) For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage.

The complete Form 2B application containing all of the amendments to the application is included as an appendix to this preamble. The required data elements of the NOI are the same as the minimum data elements in the revised

Form 2B. Where EPA is the permitting authority, it is EPA's intent to use the National NOI Processing Center to process NOIs.

What did EPA propose? EPA proposed to require applicants for individual permits to submit the following information in addition to the information required at 40 CFR 122.21(f) and 122.21(i):

- Acreage available for agricultural use of manure and wastewater;
- Estimated amount of manure and wastewater to be transferred off-site;
- Name and address of any person or entity that owns animals to be raised at the facility; directs the activity of persons working at the CAFO; specifies how the animals are grown, fed, or medicated, or otherwise exercises control over the operations of the facility; (in other words, that may exercise substantial operational control);
- If a new source, a copy of the draft Permit Nutrient Plan (PNP);
- Information about whether buffers, setbacks, or conservation tillage is being used to protect water quality; and
- A topographic map (required by Form 1) that identifies the latitude and longitude of the production area and the depth to ground water that may be hydrologically connected to surface water, if any.

EPA proposed that similar information be provided in a revised NOI for coverage under an NPDES CAFO general permit.

What were the key comments? Most of the comments received on this issue were from the States. Several citizens and associations also submitted comments. Several commenters wanted EPA to delete the requirement that the permittee submit the Permit Nutrient Plan with the permit application. Some States would also like to continue to use their forms and not the revised Form 2B. Some commenters argued that the proposed requirements set an undesirable precedent that is both unnecessary, (because NOI requirements are normally specified in the relevant general permit) and that could negatively affect other industries and reduce the flexibility of State permitting authorities.

The SBAR Panel did not specifically comment on the content of the changes to Form 2B and the NOI, but the Panel noted the substantial number of small entities in the medium range and recommended that EPA carefully consider the burden of any additional certification or application requirements. The Panel further noted that EPA had not ruled out the option of requiring a full permit application from all operations in the medium

range. The Panel was concerned that such an approach may impose a significant burden with limited environmental benefits and therefore recommended that EPA carefully consider appropriate streamlining options before considering a more burdensome approach. Finally, the Panel recommended that before adding any new application or certification requirements for operators in the medium range, EPA should carefully weigh the burden and environmental benefits of expanding the scope of the regulations in this way.

Rationale. To clarify the subsequent discussion, it is important to point out that EPA is not adopting the term "Permit Nutrient Plan" in this final rule. The Agency is referring to the nutrient management planning requirements of today's rule simply as the nutrient management plan. EPA is not requiring the nutrient management plan to be submitted as part of the permit application for existing sources or new dischargers. Instead, the permitting authority may establish within the permit what information relative to the nutrient management plan must be submitted. At a minimum, nutrient management plans must be maintained on-site and be available upon request by EPA or the State permitting authority. Regarding the changes to the individual permit application form and the NOI for coverage under a general permit, EPA believes that the minimum data elements adopted in today's rule will provide permitting authorities with the essential information needed to evaluate permit applications properly and will ensure national consistency of information received by permit authorities. To the extent that a permitting authority needs additional information to support a permit application, it can use other Clean Water Act information gathering authorities (e.g., section 308 of the Clean Water Act) to obtain such information. The new data elements correspond with the new rule requirements, including land application information.

In today's final rule, the Agency has revised the topographic map requirements for a permit application for CAFOs, by specifying that the CAFO must provide a topographic map of the geographic area in which the CAFO is located showing the specific location of the production area. In today's final rule, the Agency is consolidating all of the information to be submitted as part of a CAFO's request to seek coverage under an NPDES permit in 40 CFR 122.21(i). This information must be submitted by a CAFO, whether the CAFO is seeking coverage under an