

defined in today's rule as the minimum elements that all nutrient management plans, developed as a special condition of an NPDES permit, must meet. EPA expects that many CAFOs will satisfy the requirement to develop a nutrient management plan by developing a full CNMP, although a full CNMP is not required in today's regulations. The minimum measures of a nutrient management plan in today's final rule are consistent with the content of both the PNP as proposed by EPA and the CNMP as defined by USDA. EPA's position remains that the development and implementation of a full CNMP is one of the most effective methods for a permitted operation to demonstrate compliance with the nutrient management plan requirements required by this rule.

In today's rule, EPA is requiring all CAFOs to develop and implement a nutrient management plan by December 31, 2006, except that CAFOs seeking to obtain coverage under a permit subsequent to that date must have a nutrient management plan developed and implemented upon the date of permit coverage. This is consistent with the dates being established for the ELG. As discussed in section IV.C.2.b of this preamble, the ELGs promulgated today require Large CAFOs that are existing sources to implement the land application requirements at 40 CFR 412.4(c) by December 31, 2006 because that is the date when EPA is assured that the required planning is in fact available to the great number of regulated sources. For Large CAFOs that are new sources (*i.e.*, those commencing construction after the effective date of this rule), the land application requirements at 40 CFR 412.4(c) apply immediately.

EPA has similarly concluded that Small and Medium CAFOs subject to the NPDES provisions for nutrient management plans also, in general, will be unable to develop and implement a nutrient management plan by the date they will need to seek permit coverage under the requirements of this rule, for reasons of insufficient infrastructure. Therefore, EPA is requiring Small and Medium CAFOs to develop and implement NMP plans by December 31, 2006. As discussed in section IV.C.2.b, among other things, this time frame allows reasonable time for States to update their NPDES programs and issue permits to reflect the nutrient management plan requirements of today's rule and provides flexibility for permit authorities to establish permit schedules based on specific circumstances, including prioritization of nutrient management plan

development and implementation based on site-specific water quality risks and the available infrastructure for development of nutrient management plans. Refer to section IV.C.2.b for additional discussion on the time frame by which CAFOs must implement the land application requirements of 40 CFR 412.4(c).

Through the permit application process (every five years), a nutrient management plan will have to be reviewed and updated by the CAFO owner or operator. EPA recognizes that the nutrient management plan will be a dynamic document that might require updates more frequently than every five years. A site-specific nutrient management plan that reflects the current CAFO operation must be maintained on-site by the CAFO owner/operator. The most obvious factor that would necessitate an update to the nutrient management plan is a substantial change in the number of animals at the CAFO. A substantial increase in animal numbers (for example an increase of greater than 20 percent) would significantly increase the volume of manure and total nitrogen and phosphorus produced on the CAFO. As a result, the CAFO would need to reevaluate animal waste storage facilities to ensure adequate capacity and may need to reexamine the land application sites and rates. Another example of a reason for updating the nutrient management plan is a change in a CAFO's cropping program, which could significantly alter land application of animal waste. Changes in crop rotation or crop acreage, for instance, could significantly alter land application rates for fields receiving animal waste.

#### 5. Does EPA Require Nutrient Management Plans To Be Developed or Reviewed by a Certified Planner?

Although EPA promotes and supports the use of certified specialists to help ensure the quality of nutrient management plans, the Agency is not requiring such plans to be developed or reviewed by a certified planner as part of this final rule.

*What did EPA propose?* EPA proposed the Permit Nutrient Plans be developed, or reviewed and modified, by a certified specialist. A certified planner was defined as someone who has been certified to prepare CNMPs by USDA or a USDA sanctioned organization.

*What were the key comments?* EPA received a number of comments on this provision. Many States support a State certification program where they would have the flexibility to develop their own

program. Some producers and environmental groups supported certified plans as outlined in the proposal. Many comments related to the cost of having a specialist develop or review a plan and whether there are enough specialists across the country to handle the volume of work. Some said that a certified plan would not achieve the goal of improved water quality. Others said that operators should be able to develop their own plan, noting that USDA tools and other resources are available to operators and a specialist is not needed. There was also concern that EPA was limiting the type of specialist by listing, in the proposal, examples of who might be a specialist.

*Rationale.* EPA agrees that certification programs are more appropriately developed by USDA or at the State level. State resources, coordination with local stakeholders, and State requirements relating to nutrient management are some of the factors that may influence State specific certification programs. EPA shares the concerns regarding the current capacity to develop up to 15,500 certified plans for CAFOs and meet the demands from a universe of 222,000 other AFOs requesting CNMPs through USDA's voluntary program. Currently, EPA does not have a reliable estimate on the number of certified specialists available for developing and implementing nutrient management plans. However, EPA recognizes that some States already have certification programs in place for nutrient management planning, and expects that the USDA and EPA guidance for AFOs and CAFOs will provide additional impetus for new and improved State certification programs. These programs provide an excellent foundation for producing qualified specialists for nutrient management planning. When all of these State certification programs are in place, EPA expects that there will be sufficient capacity to develop and implement the required nutrient management plans by the required regulation implementation date of December 31, 2006.

Although not required, EPA encourages CAFOs to make use of certified specialists with the expertise to develop high quality nutrient management plans. The purpose of using certified specialists is to ensure that effective nutrient management plans are developed and/or reviewed and modified by persons who have the requisite knowledge and expertise to develop nutrient management plans that meet the regulatory requirements and that are appropriately tailored to the site-specific needs and conditions at each CAFO. Interested parties should