

consult with USDA, State Agricultural Departments, and their NPDES permitting authority regarding the availability of certified specialists and opportunities to be certified.

Under today's final rule operators may develop and implement their own nutrient management plan, and may themselves become certified nutrient management planners. In fact, EPA indicated in the SBAR Panel Report that it expected that many operators could become certified through USDA or land grant universities to prepare their own nutrient management plans. While no definitive number is currently available, results from preliminary draft studies indicate that the average CNMP cost per farm was \$7,276 per year. The list of sources in the proposal of who can provide CNMP certified specialists is there only as a sample list. It in no way precludes or prevents an operator from obtaining a CNMP from an alternate source.

6. What Are the Special Conditions Applicable to All NPDES CAFO Permits?

In today's rule EPA is defining two special conditions that are to be required in all NPDES CAFO permits: (1) CAFO owners or operators must develop and implement a nutrient management plan that addresses specific minimum elements and (2) the CAFO owner or operator must maintain permit coverage for the CAFO until there is no remaining potential for a discharge of manure, litter, or associated process wastewater other than agricultural storm water from land application areas, that was generated while the operation was a CAFO (*i.e.* proper closure). The special conditions in an NPDES permit are used primarily to supplement effluent limitations and ensure compliance with the Clean Water Act.

A discussion of the specific nutrient management plan requirements of today's rule, the key public comments and EPA rationale for requiring nutrient management plans is included in section IV.C.4 of this preamble.

In today's rule, EPA is adopting as final the proposal to require permitted CAFOs that lose their status as CAFOs (*e.g.*, they cease operations, or reduce their number of animals below the regulatory thresholds) to retain an NPDES permit until there is no remaining potential for a CAFO-generated discharge other than agricultural storm water from the land application areas. Should the facility's permit expire, the owner/operator would be required to reapply for an NPDES permit if the facility has not

been properly closed (*i.e.*, the facility still has a potential to discharge). Proper facility closure includes but is not limited to removal of water from lagoons and proper disposal or reuse of manure removed from storage areas such as pens, lagoons, and stockpiles. For CAFO facilities that down-size to become AFOs, proper closure of the CAFO is achieved when there is no longer a potential to discharge any manure, litter, or process wastewater generated while the operation was a CAFO.

What did EPA propose? In the proposal, the Agency discussed a variety of options for ensuring proper closure of CAFOs, including applying financial instruments, preparing closure plans, and, as adopted today, retaining an NPDES permit until the facility is properly closed.

EPA proposed two additional special conditions that are not being included in today's final rule. EPA proposed that the permit writer must consider whether to include special conditions to address (1) Timing restrictions on land application of manure or litter and wastewater to frozen, snow-covered, or saturated ground, and (2) conditions to control discharges to ground water with a direct hydrologic connection to surface water. Although today's rule does not include a national requirement for either of these issues to be regulated in the permit, the permitting authority may impose permit terms and conditions that address either of these issues on a case-by-case basis as appropriate. See section IV.C.2.b above for a discussion of the key comments on these two issues and EPA's reasons for not including either of them as national requirements in today's rule.

What were the key comments? Industry comments largely supported the proposal to require facilities to retain an NPDES permit until properly closed. Some environmental groups, U.S. Fish and Wildlife Service, some States and citizens preferred a closure plan with financial assurance, expressing concern that taxpayers end up paying to clean up abandoned lagoons, whereas this should be the responsibility of the CAFO operator. Some commenters opposed the closure requirement, stating that it was inconsistent with and more restrictive than NPDES requirements for other industry sectors. Others questioned the practical meaning of closure, as well as the practical ability of permit authorities to track such closed facilities.

Rationale. EPA's establishment of a minimum national standard for closure will help ensure the environmental risks associated with CAFO manure and

wastewater are minimized upon closure. Although EPA is not establishing financial surety measures, States may want to implement them as appropriate under their own authorities to prevent the environmental damage caused by facilities that are no longer in business. EPA concluded that requiring retention of an NPDES permit provides a far more effective tool for environmental protection than would simply requiring a closure plan that might, or might not, be effectively implemented.

In practical terms, how clean a facility must be to meet closure requirements that the operation no longer has a potential to discharge will be left to the permitting authority. EPA is not requiring CAFO facilities to post bonds to obtain an NPDES permit, nor does EPA calculate that closure costs are necessarily high. EPA assumes that disposal methods normal to the operation will be used to close out the facility.

The need to maintain NPDES coverage until proper closure of the CAFO is a result of the unique nature of CAFO facilities. As a part of their normal operation CAFOs may, among other things, have manure and litter storage structures, lagoons, and feed storage areas. The abandonment of any one of these has the potential for catastrophic environmental damage to waters of the U.S. As a result, to protect against unauthorized discharges, there is a need to maintain coverage of the facility under the NPDES permit until the facility is properly closed. Upon verification of the proper closure of the facility by the permitting authority there will be no need to retain the NPDES permit. The NPDES permit can then be terminated and there would be no longer any need to track the facility. EPA expects that the State permitting authority will cease to issue a permit based on evidence that the facility is properly closed. It is not expected that this will be a major burden to the States.

7. Standard Conditions Applicable to All NPDES CAFO Permits

Standard conditions in an NPDES permit are preestablished conditions that apply to all NPDES permits, as specified in 40 CFR 122.41. They include Duty to Comply, Duty to Reapply, Need to Halt or Reduce Activity Not a Defense, Duty to Mitigate, Proper Operation and Maintenance, Permit Actions, Property Rights, Duty to Provide Information, Inspection and Entry, Monitoring and Records, Signatory Requirement, Reporting Requirements, Bypass and Upset. Today's action does not make any changes to the standard permit